THE
AJMER LAW DIGEST.

THE
AJMER LAW DIGEST.

(Civil Criminal and Revenue)

Complete up to 1936.

BEING

A digest of *all cases* reported in *all* volumes of AJMER MERWARA LAW JOURNAL up to 1936 (*e g* volumes I VI and 1934 1936) and its SUPPLEMENT (1924 1927) and *other cases* from Ajmer Merwara decided by the Judicial Committee of the **Privy Council** on *appeal* or the **High Court** of Judicature at Allahabad on *reference* which have been reported in other LAW REPORTS

CONTAINING

References under appropriate sections to the *Notifications* published in the AJMER MERWARA LAW JOURNAL

BY

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ADVOCATE AJMER



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(NOTE—Under a mistake the subject *Hindu Law* has been placed after I instead of G.)

ABBREVIATIONS EXPLAINED

1 **Reports and other Abreviations**—The abreviations generally used in all *Digests* and *Law Publications* have been adopted for the AJMER LAW DIGEST

2 The following abreviations and signs have been *particularly* adopted for the AJMER LAW DIGEST

Abreviations

A D J	Additional District Judge Ajmer Merwara
A M L J	Ajmer Merwara Law Journal
A M L J SUPPTT	Ajmer Merwara Law Journal Supplement
C C	Chief Commissioner Ajmer Merwara
D J	District Judge
D M	District Magistrate
G S	In parenthesis after the number of the page indicates that the reference is to the page in the *General Section* of AJMER MERWARA LAW JOURNAL
J	Ajmer Merwara Law Journal
J C	Judicial Commissioner Ajmer Merwara
J S	Journal Section of Ajmer Merwara Law Journal
N S	Notification Section of Ajmer Merwara Law Journal
S	Ajmer Merwara Law Journal Supplement

Signs

*	The case is not reported in full but only the *Law Point* arising in the case is published Such cases are given in a separate section captioned *Short Notes of important Judgments* in Volumes III to VI of AJMER MERWARA LAW JOURNAL In Volumes III IV and VI the pages of *this section* have consecutive paging In Vol V the pages of *this section* have separate paging for the three different parts which comprise this volume In volumes for 1934 1935 and 1936 there is *separate section* for Law Points The *Law Points* will be found with the Reports of cases
† or [ ]	The case has been *Distinguished* or *Not Followed* in some subsequent case—*Such cases have also been put within brackets*
(a) (b) (c) etc or (1) (2) (3) etc	Before the head lines of a case in the DIGEST refer to the number of the head note of the case in the AJMER MERWARA LAW JOURNAL or its SUPPLEMENT
(I) (II) or (III)	After the page of a case marked with an asteric (*) refer to the first second or third *part* of 5 A M L J containing the Short Notes of important Judgments

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ABANDONMENT.

——**Of claim**—*Different from Gift*

See, Transfer of Property Act—S 43

——**Of portion of claim**—*In respect of which Court Fees is deficient*

See, C P C.—S 149 or O 7, RR. 7 & 8
Court Fees Act—S 7

ABATEMENT

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C. P. C.—S. 96 and S. 105
C P. C.—O 43, R 1 (K).

——**Suit abated**—*But representatives brought on record—Abatement is set aside—No agitation in appeal*

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***3 J 8**

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——**S 112 (2) (b)**—*Permanent Inhabitant*

See, Notification by C.C.

1936 J. 15 (N S.)

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——**Abuse of Criminal Procedur**

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Also see, Evidence Act—S. 34
C P C.—O. 8, R. 6
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Partnership Accounts

—— **Suits for accounts**—*defendant entitled to amount found due to him against plaintiff, without claiming it as a set off*

If Plaintiff sues for accounts, he impliedly undertakes to pay to the defendant any thing that may be found due on accounts being taken and defendant need not specifically pray for a decree Deft s claim not being a set off no question of Court Fees or Limitatation arises. *32 A. 525, 11 C 117, 54 M. 651* **Foll**, *46 A. 858* **Rel** (*Norman J. C*) THIKANA KHETRI v RATI RAM GHISA RAM & Co.

***1934 J. 99.**

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See, Limitation Act, S. 19

ACQUISCENCE

——**Encroachment**—*Quisence and Acquiscence—Distinction between—'Standing by'—To constitute "Acquiscence" there must be 'standing by'*

There is a distinction between mere quiescence and acquiescence. To constitute acquiescence there must be something equivalent to what is termed in legal parlance as 'standing by' (*Norman J. C.*) FATIMA v. NATHU

1936 J. 81.

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See Deed—Admission.

ADMISSION

See, Evidence Act—SS. 19 to 21

ADOPTION

——**Hindu Law**

See, Hindu Law—Adoption

——**Jain Adoption**

See, Hindu Law—Adoption—Jains

ADVERSE POSSESSION

——**Nature**—*Must be open and not secret*

Adverse possession must be open and not secret. It is not necessary that a person holding adversely should give express notice to the true owner. (*Norman J. C.*) RAMZANI BUX v. BHURI.

1936 J. 186.

ADVERSE POSSESSION—(*Contd.*)

——**Co-owner or Tenant**—*Express notice necessary—But no notice necessary when no such legal relationship*

A co owner or tenant claiming to hold adversely must point to an affirmative assertion of title against his co-owner or landlord. But when there has never been such legal relationship between the owner and the possessor as would show that the owner was at some time in constructive possession then there is a presumption that possession—long, continued, open and peaceable—is in the absence of evidence to the contrary adverse to the true owner, and that expresses notice to the true owner need not be proved. (*Norman J. C.*) FATEH LAL v. RAM NARAIN.

1936 J. 191

——**Co-Sharers**—*Scope*

As among Co sharers the exclusive possession of one is not adverse to the others and he who claims a title by adverse possession must prove definite act of ouster. (*Norman J. C.*) FAZAL HUSSAIN v. TASDIQ HUSSAIN.

1936 J. 127

——**Co-Sharers**—*Presumption against—Open assertion and exclusive occupation necessary*

(*a*) When no partition has taken place the usual presumption is that the sole occupation by one co sharer is not prima facie inconsistent with the right of the others, that the exclusive occupation and enjoyment of the property by one is not *per se* adverse possession, and that in addition there should be an *open assertion* of a hostile title and notice thereof to the others direct or to be inferred from notorious acts and circumstances. This

ADVERSE POSSESSION —(*Contd*)

is so in case of actual co sharers only (*Murphy J C*) RAFI UDDIN v KARIM BUX

1927 S 37

——**Tenant** *Definite act necessary*

(c) To constitute adverse possession there must be some definite act on the part of the tenant constituting a denial of the landlord s title (*Jolly J C*) PAHLAD v BALA PERSHAD

4 J 61

——**Tenant**—*Lease for fixed period—Tenant continuing in possession on same terms after expiry cannot claim adverse possession*

(c) Where after the expiry of the period fixed in a lease the tenant continues in possession as tenant on same terms expressed in the lease he cannot claim adverse possession and the lessor can recover the property back (Lords Tomlin Russell and Sir Lancelot Sanderson) CHANDRIKA PRASADA v B B & C I RY

A I R 1935 P C 59=1935 O W N 379=1935 A W R 459=1935 R D 165—1935 All L R 345=61 C L J 147—39 C W N 552=68 M L J 552—41 M L W 617=1935 M W N 431=1935 O L R 249=154 I C 945=37 B L R 390=37 P L R 331=16 U D 221=16 L R A (Rev) 250

——**Alienee**—*from one co owner—Vendee not in open possession—His possession not adverse to other co owners*

A co owner sold her share by an unregistered sale deed but remained in possession under a rent note from the vendee Held the possession of one co owner is the possession of all As the co owner remained in possession her possession could not to the knowledge of other co owners be adverse for they could not be expected to know that the co-owner had sold the property to the vendee and was living in it merely as a tenant (*Norman J C*) RAMZANI BUX v BHURI

1936 J 186

—— -**Alienee**—*From co sharer—Presumption of, from alienee s possession if co sharers are affected with notice*

(b) In case of an alienee from other co sharers the presumption is that the alienee s possession is adverse forthwith provided that the alienation takes place in circumstances which would effect the other co sharer with notice (*Murphy J C*) M RAFI UDDIN v KARIM BUX

1927 S 37

——**Alienee**—*From hereditary manager—Possession of alienee becomes adverse against alienor and his successors*

(i) When the hereditary manager of an estate alienates the estate possession of the alienee becomes adverse to the manager and his successors from the date of the alienation as heritable estate could not be created to take effect as successive life estates 25 M 271 **Foll** (*Jolly J C*) BASHIR KHAN v MST RAHMAT ILLAHI

4 J 44

——**Occupant**—*Of unimproved shamlat Not paying rent for long No adverse possession*

See Ajmer Land and Revenue Regulation S 7

AJMER ALIENATION OF LAND REGULATION (III OF 1914)

——S 15—*Construction—"Land" falling under this but not under Ajmer Courts Regulation—Qualified prohibition applies*

The proper construction is that in the case of 'land' falling under the definition of Regulation III of 1914 but not being land to which Regulation IX of '26 applies, the qualified prohibition of section 15 of the former Regulation will apply (*Weston J C* MAN MAL v. GHISA LAL

1936 J 161

——S 15—*Scope—Agricultural or pasture land inside the limits of a town or village is covered by this Section and not by Ajmer Court's Regulation (IX of 1926)*

Agricultural or pasture land inside the limits of a town or village is covered by Section 15 of Regulation III but not by Section 24 of the Court's Regulation. (*Weston J C*) MAN MAL v GHISA LAL

1936 J 161

——S 15—*Agricultural land cannot be sold without Collector's sanction*

Agricultural land cannot be sold without Collector's sanction (*Weston J C*) MOHAN LAL v RATNA.

1935 J. 51.

AJMER COURTS

——Not subordinate to Allahabad:

(a) Broadly speaking the Courts at Ajmer are not subordinate to the High Court of Allahabad except in two comparatively rare matters. (*Boys and Kisch, JJ*) IN THE MATTER OF A VAKIL OF BEAWAR

A. I. R. 1930 All. 887=128 I C. 388 =1930 A L J 829=1930 Cr. C. 1939.

AJMER COURTS REGULATION (I OF 1877)

[*Note—This Regulation has been repealed by* **Ajmer Courts Regulation (IX 1926) The latter regulation came into force from January 1, 1927 The former Regulation however, still governs right of Appeals, References etc for suits instituted before January 1, 1927 Ed**]

——**Scope**—*Not merely procedural—It restricts right of appeal*

(d) The old Courts Regulation (I of 1877) is not merely procedural. It not only confers but also restricts the right of appeal laid down by the C P C. (*Shannon J. C*) MODU LAL v. MOHAN LAL

4. J 7.

——**S 5 and S 25**—*Commissioner could define limits of jurisdiction of court*

(b) Under S 5 of Regulation 1 of 1877 power to define such jurisdiction was not specifically reserved to the Chief Commissioner and consequently sections 5 and 25 of that Regulation must be read together and construed in a non-contradictory sense If follows therefore that under section 25 of that Regulation the Commissioner had power to define the local limits of jurisdiction of the various Sub Judges and Munsiffs in the District and these courts could therefore exercise jurisdiction only within the local limits so defined. (*Jolly J. C*) HINDU v. MOTI LAL

4 J 69

——S 7 and Ajmer Courts Regulation (IX of 1926)—S 9—*Authority to invest Subordinate Judge with jurisdiction in suits exceeding Rs. 10,000/-*

AJMER COURTS REGULATION (I OF 1877), S 7

A general order, dated 1st December 1923 had been issued under S 7 of Regulation I of 1877 investing the Subordinate Judge, Beawar, with powers to dispose of original suits above the value of Rs 10 000/

The new Regulation contains no clause providing that powers existing under the old regulation shall continue and be deemed to have been conferred by appropriate section of the new Regulation. Under the new Regulation the Commissioner or District Judge has not authority to invest a Subordinate Judge with jurisdiction in suits exceeding Rs 10,000 This authority can be exercised only by the Chief Commissioner under S 9 (*Weston J. C*) HET RAM JETH MAL v. TULSI RAM RAM SWARUP.

1935 J 18

——**S. 15** —*Decision final under C. P C —No second appeal*

No second appeal will lie under S 15 of the Ajmer Courts Regulation against a decision declared by C P. C. to be final (*Baker J C*) SYED AMIR ALI v ABDUL AZIZ

1 J 25.

——**S 15** —*Lower Appellate court modified the decree of the trial court in favour of the appellant—But decided the point raised in Second Appeal against the appellant—Second Appeal lies*

The lower appellate court modified the decree of the trial court in favour of the appellants but decided the point raised in Second Appeal against the appellants *Held*, the Second Appeal lies *6 A M. L J. 64* **Ref** (*Norman J. C*) DURGAH KHWAJA SAHIB v GIRDHARI

1936 J. 103.

AJMER COURTS REGULATION (I OF 1877), S. 15.

——**S. 15** *Decree before repeal of Regulation (I of 1877)—Second appeal lies under S 15 even after its repeal*

Under section 15 of the Ajmer Courts Regulation (No 1 of 1877) the High Court had jurisdiction to interfere in Second Appeal with the findings of fact as well as findings of law. On January 1, 1927 Regulation 1 of 1877 was repealed by Regulation IX of 1926 which allows Second Appeal only on questions of law.

Held, the right of Appeal on the merits which had accrued to the applicant before the repeal of Regulation 1 of 1877 was not taken away by the new Regulation. (*Barlee J. C*) ABDUL RAHMAN v MST SADDI.

2 J 27

——**S 15, S.16 and S 17**—*Second Appeal—Whether concurrent findings of fact or law are binding*

Once it is shown that a second appeal lies under S 15 of Regulation I of 1877 the High Court is seized also of all points on which concurrent findings have been made the subject of a reference to the Allahabad High Court under S 17 of the Regulation by any party to the appeal. This does not apply to concurrent findings of fact as S 15 of the Regulation is to be read subject to S 16 which makes the decision of the trial court where confirmed by the appellate court on a matter of fact final, *S A. 77 of 1930* **Diss** (*Norman J C*) B N Ry. & B B & C. I. Ry. v SITA RAM AJODHYA PERSHAD.

6 J. 64

——**Scope—S. 15 and S. 17**—*When Second Appeal and Reference lie*

AJMER COURTS REGULATION (I OF 1877), S 15

A second appeal lies only when the decision of the original Court has been modified or reversed in first appeal Reference under the Regulation is restricted to points of law upon which the first appellate court has upheld the decision of the original court (*Weston J C*) ABDUL AZIZ v AMIR ALI

1935 J 102

——S 15, S 17 and S 32—*Provisions for appeals and References are exhaustive—No Second Appeal lies if First Appellate court dismissed Appeal as time barred*

The Sections dealing with appeals and References are exhaustive as regards the right of appeal Consequently even when the First Appellate Court does not hear the appeal on merits but dismisses it as time barred its order amounts to confirming the decree of the original Court and no second appeal lies (*Norman J C*) B B & C I Ry v THE EDWARD MILLS CO LTD BEAWAR

5 J 83

——S 16, S 15 and S 17—*Second Appeal when concurrent findings of fact or law are binding*

See under S 15 above

——S 17—*Scope*

A reference is permitted under S 17 when a question of law or usage having the force of law or the construction of any document or the admissibility of any evidence affecting the merits of the case arises and not otherwise (*Mukerji and Young JJ*) ALLEY RASUL ALI KHAN v BAL KISHAN

***1934 J 28**

AIR 1934 All 709=3 AWR 604 =1934 All L R 845=151 I C 362

AJMER COURTS REGULATION (I OF 1877), S 17

——S 17—*First appellate courts confirms decision of trial court—No Second Appeal—But Reference*

When first appellate court confirms the lower court s decision there can be no second appeal but there can be reference, 86 I C 626 **Foll** (*Baker J C*) MOTI LAL v MITSUI BHUSAN KAISHA LTD

1 J 29

——S 17—*Scope*

S 17 mentions the construction of any document and not of any documents' (*Mukerji & Young JJ*) ALLEY RASUL ALI KHAN v BAL KISHAN

***1934 J 28**

=A I R 1934 All 709=3 A W R 604 =1934 All L R 845=151 I C 362

——S 17—*Construction of document is question of law—Inference to be drawn from a number of documents is question of fact*

The question of the construction of certain documents is a question of law but the question what legal inference may be drawn from a number of documents is a question of fact and not a mere question of law *1923 P C 187* **Fol** (*Mukerji and Young JJ*) ALLEY RASUL ALI KHAN v BAL KISHAN

***1934 J 28**

=A I R 1934 All 709=3 A W R 604 =1934 All L R 845=151 I C 362

——S 17—*Reference in forma pauperis is competent*

(1) Provisions for reference under Section 17 are not at all analogous to the provisions of O 46, R 1, C P C There being therefore no provision in the C P C for

AJMER COURTS REGULATION (I OF 1877), S 17.

such an application, O 44, R. 1 may be deemed to cover such an application by virtue of Section 32 of Ajmer Court's Regulation A reference application consequently in forma pauperis is competent (*Jolly J C*) ABDUL QADER KHAN v ABDUL RAOOF KHAN

4 J 92

——Scope—S 17 and S 15—*When Second Appeal and Reference lie*

See, under S 15 above

——S 17, S 15 and S 32 —*Provisions for appeals and References are exhaustive—No Second Appeal lies if First Applellate court dismissed Appeal as time barred*

See, under S. 15 above.

——S.17, S. 16 and S. 15—*Second Appeal—Whether concurrent findings of fact or law are binding*

See, under S 15 above

——S 17, S. 18, S 21, S. 36 and S 37—*Reference to Chief Commissioner by Commissioner of Ajmer Appeal from Commissioner's decree made in accordance with Chief Commissioner's Judgment*

On an appeal from a decision in a civil suit of the Assistant Commissioner of Ajmer to the Commissioner of Ajmer, the latter, feeling doubtful on a question of the nature specified in S 17 of the Ajmer Courts Regulation (I of 1877), referred such question, under S 36 of the Regulation, to the Chief Commissioner of Ajmer and Merwara The Chief Commissioner dealt with the case as prescribed in S 37 of the Regulation, and returned it to the Commissioner, who dismissed the suit in accordance with the Chief Commissioner's Judgment

The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned or that the appellant should appear on a certain day under S 551 of Act X of 1877 but issued a notice to the appellant's counsel to appear on a certain day The appellant's counsel appeared on that day and the Chief Commissioner intimated that he was acting under S 551 of Act X of 1877. The appellant's counsel then proceeded to address the Chief Commissioner, and was heard for some time and then stopped, in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council The Chief Commissioner subsequently referred such question to the High Court

Held, by the Full Bench (Spankie, J. dissenting), on a reference by the Division Bench before which the Chief Commissioner's reference came, that such question arose in the trial of an appeal ' within the meaning of S. 21 of the Ajmer Courts Regulation I of 1877 and was properly referred to the High Court

Held, by the Division Bench (Spankie, J and Straight, J) that the appeal from the Commissioner's decision lay in this particular case, not to the Chief Commissioner, but to Her Majesty in Council (*Robert Stuart, Kt. C. J, Pearson, Spankie,*

AJMER COURTS REGULATION (I OF 1877), S 17.

Oldfield, and Straight JJ) THAKUR OF MASUDA v THE WIDOWS OF THE THAKUR OF NANDWARA

2 A 819

—**S 18**—*The word "shall" is mandatory and not directory—Court has no discretion to refuse*

The word "shall" is mandatory. When a question of the nature specified in S 17 has been found to exist the District Court has no discretion to refuse to make the reference. *11 A 304* **Not applicable** (*Weston J C*) ALE RASUL v BAL KISHEN

1935 J 54

—**S 18**—*Scope*

If the District Judge thinks that he should make a reference, he should state the facts which he finds as a court of appeal and then should state the question of law that he desires to be decided by the High Court (*Mukerji and Young JJ*) ALLEY RASUL ALI KHAN v BAL KISHAN

***1934 J 28**

=A I R 1934 All 709=3 A W R 604
=1934 All L R 845=151 J C 362

—**S 18 et. seqq**—*Reference by Commissioner of Ajmer—Powers of High Court*

Held that where a point of law or a question as to the construction of a document is referred to the High Court by an order purporting to be made under S 18 of the Ajmer Courts Regulation, the High Court cannot consider whether the point referred arises in the case in which the reference before it has been made or not, but its functions are limited to pronouncing an opinion on any point which may be so referred to it (*Blair and Burkitt JJ*) KALIAN MAI v RAM KISHEN

21 A 163

AJMER COURTS REGULATION (I OF 1877), S 37

—**SS 21, 17, 18 and 36 and S 37**—*Reference to Chief Commissioner by Commissioner of Ajmer—Appeal from Commissioner's decree made in accordance with Chief Commissioner's judgment*

See, under S 17 above

—**S 23**—*Companies Act—Chief Commissioner is High Court*

The Chief Commissioner of Ajmer and Merwara is the High Court for the purposes of the Companies Act for places within its jurisdiction and not the Allahabad High Court. (*Mukerji J.*) KESARI PRESS CO LTD

A I R 1926 All 649
=48 A 709=24 A L J 768

—**S 25 and S 5**—*Commissioner could define limits of jurisdiction of court*

See under S 5 above

—**S 32 S 15 and S 17**—*Provisions for appeals and References are exhaustive—No Second Appeal lies if First Appellate court dismissed Appeal as time barred*

See, under S 15 above

—**S 36 S 37, S 21 and S 17, S 18**—*Reference to Chief Commissioner by Commissioner of Ajmer—Appeal from Commissioner's decree made in accordance with Chief Commissioner's judgment*

See, under S 17 above

AJMER COURTS REGULATION (IX OF 1926)

——**Printed**—*at*

1 J 19 (J S)

——**S 6 and S 20**—*Notification No 623 C C—Appeal transferred to Additional District Judge—District Judge cannot pass any orders therein unless he withdraws that appeal*

Once an appeal is transferred to the Additional District Judge he is for purposes of that appeal constituted the court of the District Judge The District Judge ceases as regards that appeal to be the Court of the District Judge and has no jurisdiction to pass any orders therein, unless and until he exercises his powers under S 20 of the Courts Regulation to withdraw that appeal from the Additional District Judge (*Norman J C*) FAYAZ HUSSAIN v MAHMOOD ALI

6 J 48

——**S 7 and S 25**—*If jurisdiction of courts defined—Commissioner cannot limit it*

(*a*) Where the jurisdiction of Sub Judge and Munsiffs has been defined by the Chief Commissioner under S 7 of Regulation IX of 1926 the Commissioner has no power to limit such jurisdiction under S 25 of the same Regulation 27 C 272 Foll (*Jolly J C*) HINDU v MOTI LAL

4 J 69

——**S 9**—*Authority to invest Subordinate Judges with Jurisdiction in suits exceeding Rs 10 000/*

A general order dated 1st December 1923, had been issued under S 7 of Regulation I of 1877 investing the Subordinate Judge Beawar with powers to dispose of original suits above the value of Rs 10 000/

AJMER COURTS REG (1926), S 20

The new Regulation contains no clause providing that powers existing under the old regulation shall continue and be deemed to have been conferred by appropriate section of the new Regulation Under the new Regulation the Commissioner or District Judge has no authority to invest a Subordinate Judge with jurisdiction in suits exceeding Rs 10 000 This authority can be exercised only by the Chief Commissioner under S 9 (*Weston J C*) HET RAM JETH MAL v TULSI RAM RAM SWARUP

1935 J 18

— **S 12**—*Forum of Appeal is governed by the subject matter of suit and not subject matter of appeal*

Decree was for more than Rs 5 000/ The appeal related only to an amount of Rs 1,000/ odd

Held, in Ajmer the forum of an appeal is prescribed by the subject matter of the suit and not the subject matter of the appeal (*Weston J C*) GHISULAL v BASTI MAL

***1935 J 42**

——**S 14**—*Second Appeal Suit filed before Regulation—District Judge has no Jurisdiction*

(*a*) The District Court has no longer jurisdiction to hear Second Appeals even in cases filed before its coming into force All Second Appeals lie to the Court of the Judicial Commissioner (*Jolly J C*) MASJID CHRACCHIYAN v S HIRA CHAND

4 J 15

——**S 20 and S 6**—*Notification No 623 C C—Appeal transferred to Additional District Judge—District Judge cannot pass any orders therein unless he withdraws that appeal*

See, under S 6.

AJMER COURTS REG (1926), S 21

——**S 21 (d)**—*Enrolment Rules*

See, Notification by Judicial Commissioner

1934 J 7 (N S)
Superseded Rules at— **2 J 63 (G S)**
and 2 J 17 (N S)

——**S 24**— *Land covered by this Regulation as well as Ajmer Alienation of land Regulation—Sale absolutely prohibited*

In the case of land covered by Ajmer Courts Regulation as well as Ajmer Alienation of land Regulation the sale of land is absolutely prohibited (*Weston J C*) MAN MAL v GHISA LAL

1936 J 161

——**S 24**—'*And between* '*land* and *wells is disjunctive—Prohibition applies to land if there is no well in it*

The word and in the expression 'land and wells is disjunctive and the prohibition applies to and if there is no well in it (*Weston J C*) MAN MAL v GHISA LAL

1936 J 161

——**S 25 and S 7**—*If jurisdiction of courts defined—Commissioner cannot limit it*

See under S 7 above

AJMER GOVERNMENT WARDS REGULATION (I OF 1888)

——**S. 21**—*Failure to obtain authority is fatal—Defect cannot be removed by subsequent order*

AJMER GOVERNMENT WARDS REGULATION (I OF 1888)

Failure to obtain an order of the Court of Wards before filing the suit is a defect which goes to the root of the suit and cannot be cured by any subsequent action *16 C 89* **Foll** (*Norman J C*) GOPAL CHAND v THE MANAGER, MEHRUN KALAN ESTATE

5 J 97

AJMER LAND AND REVENUE REGULATION (II OF 1877)

——**S 7**—*Applies also to town*

(*d*) Section applies equally to agricultural lands and building sites whether situate in a village or a town (*Jolly J C*) PAHLAD v BALA PERSHAD

4 J 61

——**S 7**—*Occupant of unimproved Shamlat—Not paying rent for long—No adverse possession*

(*b*) Presumption is that an occupant of unimproved Shamlat land is tenant at will of the proprietory body or Shamlat and the mere fact that no rent had been paid or demanded for many years would not constitute the possession of the occupant adverse to the Shamlat (*Jolly J C*) PAHLAD v BALA PERSHAD

4 J 61

——**S 7 and S 54**—*Occupier of unimproved Shamlat land—Is tenant at will*

By virtue of S 7 every occupier of unimproved Shamlat land is deemed to be a tenant at will and can be ejected by the Revenue authorities under S 54. (*Barlee J C*) LADU v BALA PERSHAD

2 J 23

AJMER LAND AND REVENUE REGULATION (1877), S 9

——**S 9**—*Scope—It merely prohibits the division of liability to pay land revenue beyond a defined minimum but it does not prohibit the division of ownership beyond that minimum*

The Section does not prohibit the sub division of ownership beyond a defined minimum share but it merely prohibits the division of liability to pay land revenue beyond that minimum (*Norman J C*) BIRDHA v SURAJ MAL

1936 J 23

——**S 9**—*Civil Courts can order partition where Revenue courts cannot*

The object of section 9 is not to provide an anti fragmentation law but to provide a method by which a partition can be effected by the Revenue anthorities in certain cases and consequently a Civil Court can order a partition in the cases where the Revenue authorities cannot do so in view of Sec 9 (*Murphy J C*) LALA MUNNA LAL v LALA SHEO SHANKER LAL

2 J 45

——**S 41**—*Obligation to pay Hausil goes with land*

Occupancy rights are transferrable and the obligation to pay hausil is an obligation which goes with the occupancy (*Jolly J C*) BHIAN v S NISAR AHMAD

***4 J 4**

——**S 41**—*Usufructuary mortgage creates ex proprietory tenancy—Nature of proprietory rights*

(*a*) A usufructuary mortgage is a parting with proprietory rights and creates an exproprietory tenancy within the meaning of S. 41 of the Ajmer Land Revenue Regulation 3 J C 303 **Foll**

AJMER LAND AND REVENUE REGULATION (1877) S 41.

Proprietory rights are made up of the right of possession, the right of enjoyment and the right of disposition (*Murphy J C*) MOTA v RAM KISHEN

1925 S. 49.

——**S 41**—*Usufructuary mortgage—Parting with proprietary rights—Expro prietary tenancy, how created— Temporarily meaning of—'Continued in occupation', interpretation of—Absolute ownership and usufructuary mortgage distinction between—Interpretation of statutes—Canons of Interpretation—Plain and natural meaning of words*

Per *Richards, J* —

A mortgagor who creates a usufructuary mortgage of his land parts with his proprietary rights in the holding within the meaning of section 41 of the Ajmer Regulation II of 1877

Consequently he becomes an exproprietary tenant if he continues in occupation of the lands comprised in the holding which were prior to the mortgage in his own cultivation *7 A 333* **Foll** *16 A 337* **Not applied**

The word 'temporarily in section 41 shows that it was intended to include something more than an absolute and complete transfer of all proprietary rights On a proper interpretation of the section, it includes the case of a usufructuary mortgage

Per *Karamat Hussain J* —

According to the rules of interpretation a court has to look to the plain and natural meaning of the words employed and is not to be influenced by the consi-

deration that the interpretation frustrates the object with which the Legislature framed the law.

In interpreting a statute, a Court must not be swayed by what was understood to be the law in a particular locality or by a section of a community. *13 W. R. 85, 12 A 129, 11 A 113, 22 C 788 23 C. 563* **Ref.**

Canons of interpretation of statutes discussed.

In a usufructuary mortgage, the transfer of full ownership temporarily does not take place The term "temporarily" in section 41 of the Ajmer Regulation II of 1877 does not justify the inference that a usufructuary mortgage passes the full ownership for a time and thus creates an ex-proprietary tenancy. An owner of a holding who has made an ex-proprietary mortgage of his holding has not thereby lost or parted with his proprietary right either temporarily or permanently, and he does not consequently, become an ex proprietary tenant of his *khud kasht* in the holding. *7 A. 553* **Not foll** *16 A 337,* **Foll** *26 A 78, 5 A. L J 10 31 A 365 7 C 82,* **Rel**

The words "continued in possession" in section 41, means lawfully continued in occupation and therefore, if the transferor, inspite of a covenant to put the transferee in possessionof his *khud kasht* continues to hold on his *khud kasht* he cannot be deemded to continue in possession within the meaning of section 41, and cannot acquire the rights of an ex-proprietary tenant. Section 41 has no application to such a case.

Distinction between usufructuary mortgage and transfer of absolute ownership discussed. (*Richards and Karamat Hussain JJ.*) S NEMI CHAND v. GANESH.
7 A. L J 370 = 5 I. C. 503.

——S. 42 and S. 47—*Jagirdar cannot ordinarily enhance hansil*

A Jagirdar is not ordinarily entitled to enhance the hansil on any occupancy tenure so long as land Revenue settlement lasts except as permitted by SS. 42-47 of the Land Revenue Regulation. *(Jolly J. C.)* BHIAN v. S NISAR AHMAD.
***4 J. 4.**

——S. 54 and S 7.—*Scope*

See, under S. 7.

——S. 65 (3) and S. 68—*Settlement records are no evidence as regards division of property*

A statement in the settlement records that each party holds a share in each unit is not any evidence that the shares are not divided and separately owned as opposed to a tenancy in common (*Norman J C*) BIRDHA v. SURAJMAL
1936 J. 23

——S 67—*Plaintiff's remedy by execution proceeding and not suit when defendant in possession.*

Plaintiff's remedy is under S. 47 of the Code of Civil Procedure and not by suit if defendant obtains actual possession, however wrongful, of the land in suit. (*Weston J. C.*) ABDUL REHMAN v. RASUL BUX
1935 J. 82.

AJMER LAND AND REVENUE REGULATION (1877), S 68

——S 68—*Revenue and settlement entries regarding title—Presumed to be correct*

(1) Though it has been repeatedly held by the Courts that entries in revenue and settlement records are not in themselves proof of title, yet in this District the rule is otherwise, because by section 68 of Regulation II of 1877 such entries are to be presumed to be correct until the contrary is proved (*Broomfield J C*) GHISA LAL v. SUJAN MAL

5 J 21

——S 68 and S 65 (3)—*Settlement records are no evidence as regards division of property*

See, under S 65 (3).

——S 107, *Scope*

There is no specific provision in S 107 for the trial and disposal of rent suits by Revenue Officers Sec 107 (b) does not empower the law general to invest a Revenue Officer with powers to try suits or to set up a special court of any particular sort of suits There is no such court as a rent court The Naib Tehsildar tries rent suits because he is a Munsiff (*Barlee J C*) LADU v BALA PERSHAD

2 J 23

AJMER LAND AND REVENUE RULES (1895)

——R 18 (e)—*Scope—Chahi land not cultivated in any year—It does not cease to be so*

AJMER LAND AND REVENUE RULES, (1895)

The rule applies when the character of the land has been permanently changed *Chahi* land that is land irrigated by a well does not cease to be *chahi* because in any particular year it is unnecessary to use the well water (*Vorman J C*) GIRDHARI v DURGAH KHWAJA SAHIB

1936 J 128

AJMER LAWS REGULATION (III OF 1877)

1 **Pre-emption** (*SS 6 15*)
2 **Damdupat** (*S 33*)

1 Pre-emption

——Principles—*Principles laid down in 16 A 344 to be followed*

Where a right of pre emption is claimed under the statute law of Ajmer Merwara the principles laid down in I L R 16 A 344 should be followed (*Piggott and Walsh JJ*) RAM SUKH v MRS O NEAL

I L R 44 A 239 A I R 1922 All 46 = 20 A L J 59 = 65 I C 103

——Scope—*The Law in Ajmer same as in oudh*

The Law of pre emption obtaining in Ajmer Merwara appears to be the same as that in force in Oudh (*Chief Commissioner*) RAM SUKH v MRS L E O NEAL

I L R 44 A 239 = A I R 1922 All 46 = 20 A L J 59 = 65 I C 103

——Scope—*Greater utility—No ground for preference*

(d) Greater utility is no ground for pre emption unless a *custom* to the contrary is established (*Jolly J C*) MASJID CHIRAGCHIYAN v S HIRA CHAND

4 J 15

—S 6 and S 9—*Pre emption—Right of may arise even where there is no sale deed according to T P Act*

Land was sold in Ajmer but in order to defeat a possible claim for pre emption no sale deed was executed as required by Section 54 of Transfer Property Act

In all other respects the sale was complete

Held that a right of pre emption arose *Held* also where a right of pre emption is claimed under the Statute law of Ajmer Merwara the principles laid down in Allahabad ruling in *16 All 341 should be followed* (*Piggot & Walsh JJ*) RAM SUKH v L E O NEAL

A I R 1922 All 46 = I L R 44 A 239 = 20 A L J 59 = 65 I C 103 = L R 3 A 45

—S 7—*Test is character of community Presumption for benefit of village communities Revenue records not necessarily evidence of character of area*

The test in section 7 of the Regulation is the character of the community and the presumption has evidently been enacted for the benefit of village communities

Revenue records are compiled for purposes of taxation and are not necessarily evidence of real character of an area (*Murphy J C*) FIRM LAKSHMI GINNING FACTORY v Q HUTTON

3 J 1

—S 8—*Express issue necessary—Burden on Plaintiff—presumption only if property in village*

In the cases falling under S 8 of the Ajmer Laws Regulation III of 1877 there ought to be an express issue as to whether the right of pre emption exists and the burden of proving must be on the plaintiff If the property be admittedly in a village then and then only there arises the presumption as to the existence of the right under S 7 (*Broomfield J C*) MADHO LAL v M BINODI LAL

3 J 44

—S. 8—*Onus of proving custom on plaintiff*

(1) The burden of proving a custom of pre emption in the Sub division in which the property is situate lies upon the plaintiff *2 A M. L J 23* **Foll** (*Jolly J C*) QADIR BUX v KARIM BUX

4 J 81

—S 8—*Burden of Proof on Plaintiff*

The right of pre emption shall not be presumed in any town or any sub division thereof and the burden shall lie on the plaintiff to prove that the right of pre emption as claimed by the plaintiff exists in the sub division in which the property in dispute is situated No court can place the burden of proof where it does not lie (*Murphy J C*) S KAN MAL LODHA v THE KHATRI HOUSING SOCIETY LTD

3 J 23

—S 8—*Single instance not sufficient*

(4) A single instance of pre emption even in conjunction with supplementary evidence afforded by instances from other

AJMER LAWS REG. (1877) S 8

Mohallas is insufficient to prove the existence of a custom in a Mohalla (*Jolly J C*) QADIR BUX v KARIM BUX

4 J 81

——**S 8**—*Mohalla is a unit*

2 A Mohalla in Ajmer is a unit for the puposes of S 8 of Regulation No III of 1877. (*Jolly J C*) QADAR BUX v KARIM BUX

4 J 81

——**S 8**—*Custom in one Mohalla does not prove custom in another*

(3) Evidence of a custom of pre emption in one Mohalla is not a sufficient proof of the existence of a similar custom in other Mohalla *70 P R 1899 67 I C 953 and 1929 Lah 336* **Foll** (*Jolly J C*) QADAR BUX v KARIM BUX

4 J 81

——**S 8**—*Rival claimants—Priority of decree or large extent of vicinage gives no preference—Determination by lots*

In the case of rival claimants for pre emption the mere fact that the decree in favour of one is of a prior date gives him no preference over the other Nor in the absence of a custom is the larger extent of vicinage a criterion for the determination of the question of priority In such cases the most satisfactory way of deciding the rival claims is to cast lots on the analogy of S 9 of the Ajmer (Pre emption) Laws Regulation (*Jolly J C*) MASJID CHHAGCHHIYAN v S HIRA CHAND

4 J 64

——**S 8**—*Vicinage gives right to pre empt only in towns*

AJMER LAWS REG. (1877) S 33.

It is only in towns that vicinage gives a right to pre empt (*Norman J C*) AZIZ UDDIN v MADHO RAM

1936 J 149

——**S 9**—

See Under SS 6 and 8

——**S 13 (c)**—*Actual price ascertained—Finding on market price not necessary*

The market price is obviously only necessary when the actual price paid has not been ascertained (*Murphy J C*) BHAGIRAT v NATHMAL

3 J 15

2 **Damdupat**

——**S 33**—*Damdupat*

Interest decreed by a Civil Court may not exceed the amount of the principal sum of money received by the defendant (*Norman J C*) RAM CHANDRA v RADHA KISHAN

1934 J 70

——**S 33**—*Rule of Damdupat—Applies when money is payable by defendant to the plaintiff and not to a redemption suit*

The rule of damdupat in Ajmer only applies when money is payable by the defendant to the plaintiff and not to a redemption suit in which money is payable by the plaintiff to the defendant *26 A [illegible]* **Foll** (*Norman J C*) BALU RAM v MAGAN LAL

***1936 J 217**

——**S 33**—*Mortgage—Suit for redemption—Application of the rule of damdupat*

AJMER LAWS REG (1877) S 33

Held that the rule laid down by section 33 of Regulation III of 1877 applies only to cases in which money is payable by the defendant to the plaintiff and is not applicable to a suit for redemption of a mortgage (*Knox & Aikman JJ*) NEMI CHAND v RADHA BALLABH

26 A 354

AJMER MUNICIPALITIES REGULATION (1877)

(N B This Regulation has been repealed)

——**S 85**— *Municipality not entitled to take any subsequent action after failing to take action under S 85 (2) within one month of notice of re erection of building*

(*a*) A person gave the Municipal Committee of Ajmer notice in writing of his intention to re erect a certain building within the limits of the Municipality No step was taken by the Municipality within one month of the notice under section 85 (2) of the Ajmer Merwara Municipal Regulation

Held that the Committee had no authority to take any action subsequently under that section (*Chamier & Piggott JJ*) MUNICIPAL COMMITTEE OF AJMER v KIFAYATULLAH

I L R 37 A 220 = 13 A L J 291 = 28 I C 143 = A I R 1915 All 10

——**S 141**— *S 141 does not bar suit for damages for tort by Municipality*

Section 141 of the Ajmer Merwara Municipal Regulation does not bar a suit for damages in the Civil Court by a person injured by an illegal action of the

AJMER MUNICIPALITIES REGULATION (IV OF 1877), S 85

Municipal Committee (*Chamier and Piggott, JJ*) MUNICIPAL COMMITTEE OF AJMER v KIFAYATULLAH

I L R 37 A 220 = 13 A L J 291 — 28 I C 143 = A I R 1915 All 10

AJMER MUNICIPALITIES REGULATION (VI OF 1925)

——**S 3 (1)**—*Third storey construction is a new building and not repairs*

The third storey construction is a new building and not repairs (*Norman J C*) BENI GOPAL v MUNICIPAL COMMITTEE AJMER

1936 J 165

——**S 109, S 110 and S 219**—*Magistrates can question legality but not reasonableness of orders passed by the Municipality*

When the law gives powers to a Committee it is not for the Magistrate virtually to take away those powers by arrogating to himself the function of deciding whether they were reasonably exercised It is however open to the Magistrate to question the legality of the order *15 A C H* Foll (*Norman J C*) MUNICIPAL COMMITTEE AJMER v RAHMATULLAH

1934 J 4

——**S 110 and 220**— *No Civil suit lies to control Municipal discretion*

Suit to restrain the Municipality from demolishing plaintiff's latrines *Held* when the law confers a discretion on the Municipality, Civil Courts cannot control the exercise of that discretion 22 B 250

AJMER MUNICIPALITIES REGULATION (VI OF 1925), S 194

1927 All 432 **Foll** *19 B. 212, 53 A. 500, 1927 Lah 774, 1934 A M. L. J. 4* **Ref.** (*Norman J. C*) PAHLAD v. THE MUNICIPAL COMMITTEE, AJMER.

1936 J 177

——**S 194 (1), S 198, S. 220 and S. 225**—*Civil court has no jurisdiction to question notice under S. 200*

The appellant applied to the Municipality under S 194 (1) for permission to re construct Without waiting for permission he reconstructed Subsequently, within the one month required by S 198 the Municipality refused permission and served a notice, under S 220, on the appellant to demolish the construction The appellant filed the suit for an injunction on the Municipality not to demolish the construction

Held, S. 225 of the Ajmer Municipal Regulation bars the jurisdiction of the civil court to grant the relief of injunction (*Norman J C*) HARI DAS v MUNICIPAL COMMITTEE, AJMER.

1934 J 61.

——**S. 198** (*Explanation*)—*Scope*

Municipality can refuse permission where there is a dispute about title The party asking permission must, if permission is refused on the ground of want of title, go to the civil court for a declaration of title. Until the civil court has found in favour of the party, the refusal of the Municipality is final. (*Norman J. C.*) HARI DAS v. MUNICIPAL COMMITTEE, AJMER.

1934 J 61

AJMER MUNICIPALITIES REGULATION (VI OF 1925), S 220.

——**S. 200**—*Scope—Section applies when sanction required by S 194 has either not been asked for or has been refused*

"Sanction in S 200 (d) has the same meaning as 'sanction' in S 200 (a), *i e* a "sanction required by S 194 (1). Section only applies when the sanction required by Section 194 has either not been asked for or has been refused. (*Norman J C*) SUA LAL v MUNICIPAL COMMITTEE, BEAWAR

1936 J 145

——**S 200, S 194 (1), S 198 and S. 225**—*Civil court has no jurisdiction to question notice under S 200*

See, under S 194

——**S 200 and S 220**—*Order under S 200 cannot be questioned in Civil Court even if it is illegal*

The only remedy against an illegal order is an appeal to the Commissioner a Civil Suit is barred. (*Norman J C.*) BENI GOPAL v MUNICIPAL COMMITTEE, AJMER.

1936 J. 165.

——**S. 219, S 110 and S 109**—*Magistrates can question legality but not reasonableness of orders passed by the Municipality*

See, under S 109 above

——**S. 220**—*Notice consequential on plaintiff's failure to comply with legal order under S. 220—Its legality cannot be impeached.*

The notice under Section 220 is merely consequential on plaintiff's failing to comply with the order under Section 200 and granted the legality of the latter order,

AJMER MUNICIPALITIES REGULATION (VI OF 1925), S 220

its legality cannot be impeached. (*Norman J. C.*) BENI GOPAL v. MUNICIPAL COMMITTEE AJMER

1936 J. 165

——**S 220 and 110**—*No Civil suit lies to control Municipal discretion*

See under S 110 above

——**S 225 S 194 (1) S 198 and S 200**—*Civil court has no jurisdiction to question notice under S. 200*

See, under S 194 above

——**S 225 and S 208**—*Order under S 200 cannot be questioned in Civil Court even if it is illegal*

See under S 200 above

——**S 233**—*Notice necessary for suit—Applies to tort and contractual obligations*

Notice is a necessary preliminary to a suit, against the Committee for the recovery of rent Acts or illegal omissions in this section include both cases of tort and contractual obligations Acts include illegal omissions *51 B 725* P C. **Foll** (*Jolly J. C.*) MUNICIPAL COMMITTEE, AJMER v. BALA PERSHAD

***4 J. 5**

——**S 234**—*Rent is not recoverable by summary process*

Rent is not money payable under the Regulation or bye law It is not recoverable by summary process under the Section, *1927 Lahore 161* **Foll** (*Norman J. C.*) MUNICIPAL COMMITTEE, AJMER v. MANAGER, VAKIL & Co

1936 J 7.

AJMER MUNICIPALITIES REGULATION (VI OF 1925)—(*Concluded*).

——**S. 234**—*Magistrate can decide whether 'conditions' are fulfilled—He can go into question of Limitation—He can not consider whether the tax is due*

A Magistrate acting under Section 234 has jurisdiction to decide whether the conditions under which the Municipality can resort to him are fulfilled or not But he cannot go into the question whether the tax is due or not. He is entitled to go into the question of Limitation, *41C 391* **Foll.** (*Norman J C.*) CROWN v AMBA LAL

5 J 92

——**S 245 (e) (i)**—*Does not authorise the fixing of rent*

The section does not authorise the fixing of rent. (*Norman J C*) MUNICIPAL COMMITTEE, AJMER v. MANAGER VAKIL & Co.

1936 J. 7.

AJMER REGULATIONS:

——**Vol II—(H to L)**—*Manager can remit Hasil beyond his life time for justification*

The Manager can grant partial remission of Hasil beyond his life time for a good consideration, *1922 P. C. 123* **Not applicable** (*Norman J C.*) SURYA NAND v. SANTOK CHAND

1934 J. 77

——**Vol II—(H to L)**—*Sanad No 2 and No 11—Diwan of Durgah is Jagirdar—Not an Istimrardar*

AJMER REGULATIONS—(*Contd.*)

(*a*) The Dewan of the Dargah is not an 'Istimarardar but a Jagirdar and the inquiry by the Commissioner about succession to this Jagir was in his character as a Revenue Officer (*Murphy J C*) KAZI SYED SHAHBUDDIN v SYED ALA RASOOL

1925 S 6

AJMER RURAL BOARDS REGULATION (VI OF 1886)

—**S. 2**—*Local rate—Jagirdar cannot levy from his tenants*

Regulation provides for the levy of local rate by Government from all land holders but it does not provide for the levy of local rate by land holders from their tenants (*Vorman J. C*) DURGAH KHWAJA SAHIB v GIRDHARI

1936 J 108

ALLAHABAD HIGH COURT

—*Courts at Ajmer are not subordinate to Allahabad High Court except in two comparatively rare matters*

(*a*) Broadly speaking the Courts at Ajmer are not subordinate to the High Court of Allahabad except in two comparatively rare matters (*Boys and Kisch JJ*) IN THE MATTER OF A VAKIL OF BEAWAR

A I R 1930 All 887 = 128 I C. 388 = 1930 A L J 829 = 1930 Cr C 1239.

APPEAL

Also see C. P C—S 96 and S 100 and O 41—O 43
Ajmer Courts Regulation (I of 1877)—SS 15–17
Ajmer Courts Regulation (IX of 1926)—SS 12—14

Alteration in Law

See, Practice—New Law

—**Competency**—*Successful defendant can appeal if decree negatives a right claimed by him*

(*a*) A defendant has a right of appeal even when the decree is not on the face of it against him if it impliedly negatives a right claimed by him against the plaintiff or the other defendants *21 A 117* and *9 C W N 984* **Rel** (*Broomfield J C*) MST KAJJI v NANNE KHAN

3 J 64

—**Competency**—*Not competent on a point which will not be res judicata*

An appeal is not admissible on a point which would not operate as res judicata

5 J 106

—**Court Fees**—*Deficient—Several reliefs but not separately valued—Appellate Court will not hear Suo motu*

Where the reliefs are several and are not separately valued it is not possible for a Court of Appeal to hear the appeal up to the value of the Court fee paid within limitation suo motu without an application to amend the memorandum of appeal *1931 Lah 237* **Doubted** (*Norman J C*) MD HASMAT ULLAH v BASTI BIBI

6 J 27

—**Court Fees**—*Deficient—Court not bound to allow time*

APPEAL—(*Contd*)

(*a*) It is not obligatory upon a Court to allow time to remedy a deficiency in Court fee in the case of a memo of appeal The concession allowed by S 149 C P C cannot be claimed as of right *38 B 41* **Diss** *50 A 980* **Foll** *(Jolly J C)* SUJA NAND v MOOI CHAND

4 J 27

——**Court Fees**—*Paid after Limitation Proper time for raising plea that appeal barred by time*

See Practice—Procedure.

——**Execution**—*Not necessary to file formal decree*

An order in an execution application is in itself a decree within the meaning of S 2 (2) of the C P C and consequently it is not necessary to file a copy of a formal decree even if drawn up with the Memo of appeal (*Norman J C*) MST GOPI v JUGAL KISHORE.

***5 J 3 (III)**

——**'Limitation'**—*changed during suit—New Law governs appeal*

See Practice—New Law

——**New Law**

See, Practice—New Law

——**Party**—*Necessary—Lower Court finding that plaintiff has no title against some defendants—They are necessary parties*

Suit for redemption Defendants No 2 and 3 raised the plea that plaintiff's interest had passed to them by adverse possession and so he could not redeem Lower Courts accepted the plea and dismissed the suit Plaintiff appealed but did not join Defendants No 2 and 3

APPEAL—(*Concluded*)

Held, the appeal must fail, since if allowed it would result in two inconsistent decrees. (*Norman J C*) MOHAMMAD JAN v MASUMAN BIBI

1936 J 122

——**Privy Council**—*In capital sentence*

See Privy Council—Appeal

——**Right to**—*Is a vested right*

A right of appeal is a vested right which inheres in a party from the commencement of the action in the court of first instance 1928 *Lah* 627, 50 *All*. 965, 13 *C L* 86, 1927 *Mad 977* 10 *B L R* 330 1930 *All*. 225, 38 *Mad* 101 **Foll** (*Shannon J C*) MODU LAL v MOHAN LAL

4 J 7.

——**Scope**—*Is continuance of suit*

(*b*) An appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, 1929 *All*. 756 **Foll** (*Shannon J C*) MODU LAL v MOHAN LAL

4 J 7.

——**Second Appeal**

Also see Ajmer Courts Regulation (I of 1877)—S 15
Ajmer Courts Regulation (IX of 1926)—S 14

——**Second Appeal**—*Only when right conferred by statute*

(*c*) The right of second appeal is not a natural or a birth right of a party, such a right must be conferred by a statute (*Shannon J C*) MODU LAL v. MOHAN LAL.

4 J 7.

——**Valuation**—*Doubtful*

See, Practice—Procedure

APPELLATE COURT

Also See C P C —O 7 R 8

——**Appellate Court**—*Not bound to hear suo motu Appeal up to the value on which court fees paid*

An appellate court is not bound suo motu to hear an appeal upto the value on which the court fees is paid If it is for the parties to put their case before the court and it is not open to a party who failed to claim a relief to say that it was the court's business to give it to him without being asked to do so *1931 Lah 237* **Diss** (*Norman J C*) B B & C I Ry Co v Edward Mills Co Ltd Beawar.

6 J 53

ARBITRATION

Also see C P C—S 115
C P C—Sch II

1 **AWARD**
2 **REFERENCE**

(1) Award

——**Award**—*Partly bad partly good—Terms separable—Good terms a bar to suit*

An award though partly unenforceable may as regards other terms which are separable operate as a bar *1921 C 253 18 C 411 56 A 556 1925 Pat 470* **Not foll** (*Norman J C*) Amba Lal v Hari Shanker

1934 J 81

——**Award**—*Bars suit*

Award is a bar to a suit on any matter dealt with by the award this doctrine is

ARBITRATION—(*Concluded*)

not statutory but is common law doctrine, *11 C 586* and *18 C 114* **Foll** (*Norman J C*) Amba Lal v Hari Shanker

1934 J 81

——**Award**—*Portion of award bad—The remainder will be maintained*

When separable portion of an award is bad the remainder of the award if good will be maintained *23 I. C 625* **Foll** (*Barlee J C*) Nathan v Mst Amiran

2 J 35

——**Award**—*Revision lies in suitable cases*

A revision application would lie to the High Court if the court proceeds in such a manner so as to come within the ambit of section 115 C P C (*Jolly J C*) Chagan Mal v Nand Mal

***3 J 1**

(2) Reference.

——**Reference**—*Pendency of suit which is withdrawn no bar to*

The pendency of a suit which is withdrawn does not make a reference illegal in consequence *49 Cal 608* **Referred** (*Norman J C*) Amba Lal v Hari Shanker

1934 J 81

ARMS ACT (XI OF 1878

——**S 16**—*Rules for deposit of Arms*

See Notification by C C

1936 J 22 (N S)

APPEAL—*(Contd.)*

(*a*) It is not obligatory upon a Court to allow time to remedy a deficiency in Court fee in the case of a memo. of appeal. The concession allowed by S 149 C.P C. cannot be claimed as of right *38 B 41* **Diss** *50 A 980* **Foll** *(Jolly J C.)* SUJA NAND v MOOL CHAND.

4 J 27.

——**Court Fees**—*Paid after Limitation Proper time for raising plea that appeal barred by time*

See, Practice—Procedure.

——**Execution**—*Not necessary to file formal decree*

An order in an execution application is in itself a decree within the meaning of S 2 (2) of the C P. C. and consequently it is not necessary to file a copy of a formal decree, even if drawn up, with the Memo of appeal. (*Norman J C*) MST GOPI v JUGAL KISHORE.

***5 J 3 (III)**

——**'Limitation'**—*changed during suit—New Law governs appeal*

See, Practice—New Law.

——**New Law**

See, Practice—New Law.

——**Party**—*Necessary—Lower Court finding that plaintiff has no title against some defendants—They are necessary parties:*

Suit for redemption. Defendants No 2 and 3 raised the plea that plaintiff's interest had passed to them by adverse possession and so he could not redeem. Lower Courts accepted the plea and dismissed the suit Plaintiff appealed but did not join Defendants No 2 and 3. *Held*, the appeal must fail, since if allowed it would result in two inconsistent decrees. (*Norman J. C*) MOHAMMAD JAN v. MASUMAN BIBI.

1936 J. 122.

APPEAL—*(Concluded.)*

——**Privy Council**—*In capital sentence:*

See, Privy Council—Appeal

——**Right to**—*Is a vested right:*

A right of appeal is a vested right which inheres in a party from the commencement of the action in the court of first instance 1928 *Lah* 627, 50 *All.* 965, 13 *Cal* 86, 1927 *Mad.* 977, 10 *B L.R.* 330, 1930 *All.* 225, 38 *Mad* 101 **Foll** (*Shannon J C.*) MODU LAL v. MOHAN LAL.

4 J. 7.

——**Scope**—*Is continuance of suit:*

(*b*) An appeal is a mere continuance of the original proceeding initiated by the filing of the plaint, 1929 *All.* 756 **Foll.** (*Shannon J C*) MODU LAL v. MOHAN LAL

4 J. 7.

——**Second Appeal.**

Also see, Ajmer Courts Regulation (I of 1877)—S 15.

Ajmer Courts Regulation (IX of 1926)—S. 14.

——**Second Appeal**—*Only when right conferred by statute.*

(*c*) The right of second appeal is not a natural or a birth-right of a party, such a right must be conferred by a statute. (*Shannon J. C.*) MODU LAL v. MOHAN LAL.

4 J. 7.

——**Valuation**—*Doubtful.*

See, Practice—Procedure.

APPELLATE COURT.

Also See, C P. C. –O 7, R. 8.

——**Appellate Court**—*Not bound to hear suo motu Appeal up to the value on which court fees paid*

An appellate court is not bound suo motu to hear an appeal upto the value on which the court fees is paid. If it is for the parties to put their case before the court and it is not open to a party who failed to claim a relief to say that it was the court's business to give it to him without being asked to do so, *1931 Lah 237* **Diss.** (*Norman J. C.*) B B & C I. Ry. Co. v. EDWARD MILLS CO. LTD. BEAWAR.

6 J 53

ARBITRATION

Also see, C. P C —S. 115.
C. P. C.—Sch. II.

1. **AWARD.**
2. **REFERENCE.**

(1) Award

——**Award**—*Partly bad, partly good—Terms separable—Good terms a bar to suit*

An award though partly unenforceable, may as regards other terms which are separable, operate as a bar, *1921 C 253 18 C 411 36 A 336, 1923 Pat 470* **Not foll** (*Norman J C*) AMBA LAL v HARI SHANKER.

1934 J 81

——**Award**—*Bars suit*

Award is a bar to a suit on any matter dealt with by the award this doctrine is

ARBITRATION—(*Concluded*).

not statutory but is common law doctrine, *11 C. 386* and *18 C. 114* **Foll.** (*Norman J C*) AMBA LAL v HARI SHANKER

1934 J 81.

——**Award**—*Portion of award bad—The remainder will be maintained.*

When separable portion of an award is bad, the remainder of the award, if good, will be maintained, *23 I. C 625* **Foll.** (*Barlee J C.*) NATHAN v MST. AMIRAN.

2 J. 35.

——**Award**—*Revision lies in suitable cases*

A revision application would lie to the High Court if the court proceeds in such a manner so as to come within the ambit of section 115 C. P C. (*Jolly J. C.*) CHAGAN MAL v NAND MAL.

***3 J. 1.**

(2) Reference.

——**Reference**—*Pendency of suit which is withdrawn no bar to*

The pendency of a suit which is withdrawn does not make a reference illegal in consequence, *19 Cal 608* **Referred.** (*Norman J. C*) AMBA LAL v. HARISHANKER.

1934 J. 81.

ARMS ACT (XI OF 1878.

——**S 16**—*Rules for deposit of Arms*

See, Notification by **C. C.**

1936 J 22 (N.S)

ATTESTATION

——*No inference of knowledge of contents—But circumstances may show knowledge*

(3) The attestation of a deed by itself does not estop a person from denying anything except that he witnessed the execution of the deed Knowledge of the contents ought not to be inferred from the mere fact of attestation *1927 Cal 933, 6? I C 9?1* **Rel** But the attestation may take place under circumstances which would show that the witness did in fact know the contents of the deed *19 I C ?25 ?0 I C ?? ?0 I C 271* **Rel** (*Shannon J C*) ABDUL BASHIR v MST. BISMILLAH

5 J 36

BAR COUNCIL ACT (XXXVIII OF 1926)

——**S 9, R 1, Proviso (a)—Scope**

(c) The clause practised in one or more of the Courts of the Court subordinate to the Allahabad High Court as used in the rules framed under S 9 means 'Practised in one of the Courts in this province' (*Boys & Kisch, JJ*) IN THE MATTER OF A VAKIL OF BEAWAR

A I R 1930 ALL. 887 =128 I C. 388 =1930 A L J 829 =1930 Cr C 1239.

BENAMI

——**Onus of proof**—*On person alleging ownership*

BENAMI—(*Concluded*)

(1) (*a*) A person who alleges that property conveyed to another belongs to him must prove his allegation and prove it beyond reasonable doubt *69 I C 67* and *1926 P C 77* **Rel** (*Shannon J C*) ABDUL BASHIR v MST BISMILLAH BIBI

5 J 36

——**Source of money**—*is important factor though not conclusive*

(1) (*b*) The source of the purchase money is an important criterion though it is not conclusive when there were other circumstances showing that the purchaser intended the property to belong to the person in whose favour the sale deed was executed *192? All 59* **Rel** (*Shannon J C*) ABDUL BASHIR v MST BISMILLAH BIBI

5 J 36

BOND

——*Consideration for a bond was past debt—Presumption that past debt was not time barred*

Where the consideration for the bond is past debt it is a proper presumption against the executant that the debt for which the bond was taken was not time barred (*Norman J C*) CHANDAN MAL v JETHA

1934 J 68

——*Bond executed by guardian of a minor—Consideration past debt of the minor's father—Creditor must prove that consideration was good*

When a bond is executed by the natural guardian of a minor and the consideration for it is past debts due by the

BOND—(*Contd*)

minor's father the creditor must prove affirmatively that the consideration for the bond was good that is to say that the debts in lieu of which it was executed were not time barred (*Norman J C*) CHANDAN MAL v JETHA

1934 J 68

BURDEN OF PROOF

See (1) '*Evidence Act—SS 100 110*,'

(2) Under the substantive heading of the subject whose burden of proof is sought to be consulted e g '*Railway Act—S 72*' Hindu Law—Alienation—Legal necessity' Benami' etc

(3) Criminal Trial—Burden of proof

CANTONMENT ACT (II OF 1924)

——S 280—(*Cantonment Land Administration Rules—R 13*)—*Title on land cannot be conferred by condonation*

Title on land canot be conferred by condonation The directions of the Government of India contained in their letter is not law but executive instructions to the Cantonment authority not to take legal action against encroachments on Cantonments land in certain cases A Cantonment resolution of condonation confers no legal title (*Norman J C*) NANGA v AMLA

1936 J 44

CAUSE OF ACTION

——*Test of distinction*

When a fiscal distinction is made between two causes of action it is not improper to hold that these are two distinct causes of action (*Weston J C*) UMRAO v MAHADEVI

1936 J 4

CESSES

——*Colonel Dixon s Robkar dated the 13th December 1854 Effect of—To whom applies*

Colonel Dixon s Robkar dated the 13th December 1854 is merely an executive order and has not the force of statute law It merely forbids collection of cesses—ginti Kholri etc by Bhumias and Patels for their own benefit It does not apply to village bodies (*Norman J C*) CHANDI v DHOOL SINGH

***5 J 3 (III)**

——*Recovery by Istimrardars not illegal—Colonel Dixon s Robkar of 1854 refers to Bhumias and Patels*

(i) The levy of cesses e g Kholri, Jhumpi Andhi, and Neota by istimrardars has never been prohibited by Government and is therefore not illegal Colonel Dixon s Robkar of 1854 refers only to patels and Bhumias and not Istimrardars (*Jolly J C*) NATHU v RAJA RANCHODSEN

4 J 108.

CHILD MARRIAGE RESTRAINT ACT (XIX OF 1929)

——*Court has no power to restrain a marriage contrary to Child Marriage Restraint Act*

Court has no power to interfere to restrain a marriage which is contrary to the Child Marriage Restraint Act (*Norman J C*) MAHENDRA LAL v MANGI LAL

1936 J 182

CHILDREN ACT (BOMBAY ACT, XIII OF 1924).

——**Scope**—*Bombay Children Act (XIII of 1924) extended to Ajmer-Merwara with certain modifications*

See, Notification by C C

1 J 29 (J S)

——**Operation**—*From June 1, 1926*

See, Notification by C C.

1 J 29 (J S)

——**S. 52 (1) & (2)**—*Rules*

See, Chief Commissioner s Notification,

1936 J 16 (N S)
and 2 J 21 (N S)

——**Institutions**—*Named*

See Notification by C C

1936 J 16 N S)
and 1 J 30 (J S)

CIVIL PROCEDURE CODE (V OF 1908)

——**S 7, S 47 and S 52**—*Extent of a legal Representative's lien on immoveable property of the judgment debtor—Small Cause Court can consider the question in proceedings under S 52—But it has no jurisdiction to make a final determination on the question*

A Small Cause Court can consider the question of a legal representative s lien on immoveable property of the Judgment debtor for the purpose of determining whether execution should proceed but it has no jurisdiction to make a final deter mination on the question (*Weston J C*) HIRA LAL v NAND RAM

1935 J 47

——*S 9—Suit to recover voluntary offerings or subscription—Not cognisable*

A suit to recover voluntary offerings or subscription is not of a nature cognis able by the Civil Courts Therefore a *Joshi* or a Brahmin has no right to file a suit for recovery of a '*Brit*' against his *Jujman* or another Brahmin who has recovered it *36 B 91* **Not Foll** *35 I C 345, 1929 Pat 103 and 6 I C 223* **Fol** (*Shannon J C*) DHANNA LAL v CHITAR MAL.

***5 J 4 (I)**

——**S 11**—*Not exhaustive—If previous proceedings a nullity—No Res judicata*

The Section is not exhaustive on the subject of resjudicata Where the previous proceedings were a nullity they could not be *res judicata* (*Norman J C*) F. OTAR MAL CHATAR BHUJ v F. SURAT RAM POONAM CHAND

***5 J. 1 (III)**

CIVIL PROCEDURE CODE (1908), S 11

——S 11—*Party—Distinction between necessary and proper party not material*

The distinction between a necessary and a proper party is not material on a question of res judicata, *55 A 103* **Foll** *12 C 580 & 27 A 59* **Not Foll** (*Norman J C*) ASA RAM v ABDUL RAHMAN

5 J 106

——S 11—*Party s successor—Will be bound if he is legal representative in respect of the issue in question*

(c) In order that a judgment or decision of an issue against one person may operate as Res judicata as against that person s alleged successor it must be shown that the successor is in fact the legal representative of the former party in respect of the issue in question In short unless the capacity in which the legal representative is sought to be made liable is a capacity which has been derived by him from his predecessor in title the previous judgment cannot be a bar under section 11 C P C (*Jolly J C*) NATHU v RAJA RANCHOD SEN

4 J 108

——S 11—*Previous enquiry under S 52 by Small Cause Court no bar to fresh enquiry by Civil Court under S 47*

A previous enquiry under S 52 C P C by a Small Cause Court on the question of the extent of a legal representative s lien on immoveable property of the judgment debtor is no bar to an enquiry on the same question by the Civil Court under S 47 C P C (*Weston J C*) HIRA LAL v NAND RAM

1935 J 47

CIVIL PROCEDURE CODE (1908), S 11

——S 11—*Mere mention of a debt without claiming a set off does not bar a separate suit*

Where plaintiff was not bound to counter claim in the earlier suit the mere mention of a debt (alleged to be due to the defendant from the plaintiff) in the written statement without attempt to convert the matter into a counter claim cannot bar a seperate suit (*Weston J C*) GAINDA LAL v ANUP SINGH

1935 J 37.

——S 11—*Trial Court s decision would have operated as Res Judicata if no appeal had been preferred—But appeal filed—Appeal abated—Trial Court s decision operates as Res Judicata*

An unsuccessful party cannot avoid a decision from operating as Res Judicata by filing an appeal and allowing it to abate (*Weston J C*) DURGAH KHWAJA SAHIB v JAGDISH

1935 J 58

——S 11—*Limitation—must be pleaded at first opportunity*

A point of Limitation must be raised when first opportunity offers and when it is not the matter becomes Res Judicata *9 A 28 18 B 635 at 1 17 M C 11* **Foll** (*Murphy J C*) D B SETH UMED MAL v BHAGWATI PERSHAD

2 J 62

——S 11—*Waiver*

A plea of Res Judicata can be waived but a mere failure to set it up in the trial court does not amount to waiver *55 A 65 S P 10* **Foll** *56 I C 283* and *1929 Cal 165* **Dist** (*Norman J C*) NANNI BEGUM v ABDUL SAMAD

6 J 57

CIVIL PROCEDURE CODE (1908), S 11

—— S 11 and O 23 R 1—*Partition Withdrawal of suit no bar to fresh suit*

A partition suit withdrawn under O 23 R 1, without any determination of questions in issue even without permission to file a fresh suit does not bar a fresh suit on the recurring cause of action 46 *A* 820 and 28 *A* 627 **Foll** (*Weston J C*) FATMA v FAKHRUDDIN.

1934 J 118

Execution Proceedings

——S 11—*Execution Proceedings—Principles (not section) apply*

S 11 does not apply *in terms* to the proceedings in Execution but the principles embodied in the rule do apply 6 A. 268 and 8 C. 51 **Foll,** (*Murphy J C*) D B SETH UMED MAL v BHAGWATI PERSHAD

2 J 62

——S 11 (Explanation IV)—*Execution Proceedings—Principles of constructive Res Judicata apply*

In construing whether constructive res judicata arises the court must consider whether the object on which is alleged to be barred by res judicata was one which the Judgment deb or was bound to raise at an earlier stage At whatever stage the judgment debtor does raise objections he must raise *all his* objections *37 A 589 17 A 86 18 A* 201, *53 A 717* **Discussed** *4 A M L J 91* **Dist** (*Norman J C*) NARAIN DAS v PARAS RAM

1936 J 173

——S 11 (Expl IV)—*Execution—Order at one stage does not operate as res judicata against order at another stage*

CIVIL PROCEDURE CODE (1908) S 11

(3) There is no authority for the proposition that an order at one stage of a proceeding operates by implication as res judicata in respect of an issue raised at a latter stage of the same proceeding *9 P. 306* **Rel** (*Jolly J C*) ABDUL AZIZ v CHAND MAL

***4 J 94**

——S 11 (Expl IV)—*Constructive Res Judicata—Execution—Cautious application*

(*d*) The doctrine of constructive res judicata is to be applied cautiously to execution proceedings *2 A M L J 62* **Appr** (*Broomfield J. C*) ABDUL MAJID v R B S BIRDH MAL

3 J 59

——S 11 (Expl IV)—*Execution—Proceedings—Cautious application*

The doctrine of *constructive* Res Judicata when applied to execution proceedings must be extended *cautiously i e* to the limit which is necessary to prevent abuse of the procedure of the court but with due regard to the nature of the proceeding and the difference between such proceedings and regular suit (*Murphy J C*) R B SETH UMED MAL v BHAGWATI PERSHAD

2 J 62

——S 11—*Execution—Decree holder getting his application dismissed before notice to judgment debtor—It not Res judicata*

(2) Where an order directing execution has been made on an application that order, if not reversed in appeal will for the purpose of a subsequent application be conclusive about the validity of the origina

CIVIL PROCEDURE CODE (1908), S 20.

application But when the execution application was struck off at the request of the decree holder even before notice was issued to the judgment debtor the question of the application's validity is not res judicata in a subsequent application 8 C 51 **Dist** (*Jolly J C*) ABDUL AZIZ v CHAND MAL.

4 J 94

——**S 20**—*Whether suit triable by Small cause court—Depends on plaint and not defence*

Denial of plaintiff s title by defendant would not affect the Jurisdiction Jurisdiction depends on the frame of the suit and not on the defence set up *26 I C 128 and 32 Bom 356* **Rel** (*Baker J C*) KAN MAL v LAKHMI CHAND.

1926 S 17

——**S 20 and O. 7, R 1**—*Cause of action neither pleaded nor proved—Court has no jurisdiction*

Plaint gives no indication as to how the cause of action arose within the court s jurisdiction No mention as to where the price was payable No evidence led upon the point *Held*, as plaintiff has not attempted to show that money was payable within the court s jurisdiction and not to his agent or canvasser who made the contract at Umreth in the Bombay Presidency, the court had no jurisdiction (*Weston J C*) B P BHARGAVA v C M SHAH Co

1934 J. 103

——**S 20 (c)**—*Creditor outside the realm—Debtor not bound to pay where creditor resides*

CIVIL PROCEDURE CODE (1908), S 21.

The general rule, that the debtor is bound to make payment where the creditor resides, does not apply when the creditor lives outside the realm *53 C 88* **Foll** (*Norman J C*) HAR LAL RIKHAB DAS v KESRI MAL

1934 J 44.

——**S 20 (c)**—*Promissory note—Court of place of assignment also has jurisdiction*

The assignment of a promissory note at a particular place is a part of the cause of action and gives the assignee the right to file a suit on the promissory note at the place of assignment *37 I C 681 1933 Sind 179* and 22 C 451 **Foll** *65 I C 65* and *1929 Cal 306* **Dist** (*Norman J. C*) MAHENDRA SINGH v R B TIKAM CHAND

6 J 3

——**S 21**—*Decree by court having no territorial jurisdiction—Suit to set it aside lies Not so in case of defect of pecuniary jurisdiction*

A separate suit to set aside a decree passed by a court without territorial jurisdiction is maintainable because there is a lack of jurisdiction *ab initio* but no suit would lie on the ground of want of pecuniary jurisdiction alone The reason being that an error in valuation of a suit does not oust the jurisdiction of the court to decide that point and will not necessarily result in the decree in that suit being set aside as a nullity under section 11 of the suits valuation Act by an Appellate court even if the decision is wrong *22 A L J. 120* **Rel** (*Jolly J. C*) RATAN LAL v. MOTI LAL.

4 J 103

CIVIL PROCEDURE CODE (1908), S 34

——S 34—*Instalments—Equitable to allow future interest*

When instalments are allowed it is equitable to allow future interest (*Norman J C*) KANHIYA LAL v HUNJA

*6 J 1

——S 34 and O 34, R. 2 and R 4—*Mortgage suit interest in—S 34 has no application—O 34, RR 2 and 4 apply—interest at stipulated rate must be allowed up to date fixed for payment in decree for sale reasonable rate be allowed*

S 34 of C P C. does not apply to mortgage suits These are governed by O 34, R. 2 and R. 4 And the consequence is that interest must be allowed on the principal to the date of the suit at the rate provided in the mortgage, and also at the same rate from the date of the suit up to the date fixed by the court for payment of the mortgage debt, and that in a decree for sale it may be allowed on the aggregate of principal, interest and cost from the date fixed for payment to date of realization at a reasonable rate (*Murphy J. C*) KALYAN MAL v SHIO DAS.

3 J 17.

——S. 35—*Pleader s fee—Ordinarily allowable on cross objections*

Pleader's fee is ordinarily allowable on cross objections (*Norman J C*) AZIZUDDIN v. MADHO RAM.

1936 J. 49

——S 35—*Pleader's fee—Calculation on value for jurisdiction and not on value for court fees*

CIVIL PROCEDURE CODE (1908), S. 35.

Pleader s fee should be calculated on the value for jurisdiction and not on the value for court fees. (*Norman J. C*) AZIZUDDIN v MADHO RAM

1936 J. 149.

——S 35—*Pleader s fees—Defendants confess judgment after issues—Calculation as in an uncontested claim*

Even when defendants confess judgment after issues have been framed pleader's fees is to be calculated as in an uncontested claim. (*Jolly J. C.*) SHIVE NARAIN v RAJA RANCHOR SEN

*3 J 6

——S. 35—*Two sets of defendants—Their defence substantially the same—Only one set of costs to be allowed*

There were two sets of defendants. Their defence was substantially the same. They engaged separate counsel because they were not on good terms with each other *Held*, Plaintiff should not suffer for the quarrels of defendants only one set of cost was allowed. (*Norman J. C*) LAL CHAND v RAM BILAS.

1936 J 63.

——S. 35——*Scope—Costs not following the event—Judge must give his reasons*

The ordinary rule is that costs follow the event and if the Judge decides otherwise he is bound to give his reasons. (*Norman J. C*) LAL CHAND v. RAM BILAS.

1836 J. 63.

——S 35—*Costs—Quantum in suit for damages*

In suits for damages it is usual unless the amount of damages has been deliberately exaggerated to increase the costs to award full costs to a successful plaintiff even though the amount claimed may not be awarded in full (*Norman J C*) AHIDUDDIN BEG v MAZADAR ALI

1934 J 34

——S 35—*Suit against several Railways—Railway liable should pay costs of Railway exonerated*

When goods have travelled over the systems of more than one Railway plaintiff is practically bound to sue all the companies concerned since he does not know where the missing goods are Ordinarily therefore it would be equitable that the company found liable should pay the costs of the company exonerated (*Norman J C*) B N RY & B B & C RY. v SITARAM AJODHYA PERSHAD

6 J 64

——S 35—*No trial on merits—But dismissal for reasons beyond party's control—Each party must bear its costs*

(*b*) Where a suit is not tried on merits but is dismissed for reasons beyond the control of the parties the ordinary rule is to make no order as to costs or to direct that each party should bear his own costs (*Baker J C*) S GADH MAL LODHA v ABDUL RAHMAN

1926 S 38

——S 35—*Remand—Due to mistake of court—Parties to bear their costs*

(*l*) When a remand is necessitated by a mistake of the trial court and not on account of any fault of the parties the

proper order about costs is to order the parties to bear their own costs (*Broomfield J C*) MST KAJJI v NANNE KHAN

3 J 64

——S 35—*Practice at Mount Abu*

No rules regulating the assessment of counsel's fee in Mount Abu have been prescribed The matter therefore lies in the discretion of the Court Special circumstances demand special rules (*Norman J C*) THIKANA KHETLY v RATI RAM GHISA RAM

***1934 J 99**

——S 35 and S 100—*Costs—Principle involved—Second appeal lies*

(*a*) A second appeal would lie with regard to costs where question of principle is involved (*Baker J C*) S GADH MAL v ABDUL RAHMAN

1926 S 38

——S 35—*A—Second Appeal*

See C P C—S 104 (1)

——S 38—*Consent decree passed though party absent—Court executing such decree cannot go behind the decree*

Ordinarily the executing Court has not power to go behind the decree and refuse to execute it In exceptional cases such as where a decree has been passed against a person who was dead it is open to the executing court to treat the decree as nullity which on the face of it it is An ex parte decree passed without recording evidence may be a decree which is liable to be set aside in appeal but it is not a nullity (*Weston J C*) SHANKER LAL v ALLA NOOR

1935 J 49

CIVIL PROCEDURE CODE (1908), S 39

——S. 39 (2)—*Jurisdiction of Subordinate Courts—It must have pecuniary Jurisdiction to pass the decree*

The Subordinate Court to which a decree is transferred must be a Court which would be competent to execute the decree as an original court, that is to say, it must be a court which has pecuniary jurisdiction to pass such a decree. (*Weston J. C.*) HET RAM JETH MAL v FIRM TULSI RAM RAM SWARUP.

1935 J 18.

——S. 42—*Execution—Executing court cannot question jurisdication of the court which passed the decree*

It is not open to an executing court in execution proceedings to question the jurisdiction of the court which passed the decree Two exceptions are (i) when a decree is against a dead person and (ii) when a decree is of a foreign court, *9 R. 180, 41 C 627* **Foll** *53 C. 166 and 1932 Cal 550* **Diss** (*Ashman J C.* NAND KISHORE v BHAIRON NARAIN

6 J 11.

——S 47—*Plaintiff's remedy by execution proceedings and not suit when defendant in possession*

Plaintiff's remedy is under S. 47 of the Code Civil Procedure and not by suit if defendant obtains actual possession, however wrongful of the land in suit. (*Weston J. C.*) ABDUL REHMAN v. RASUL BUX.

1935 J 82.

——S. 47, S 7 and S. 52—*Extent of legal Representative's lien on immoveable property of the judgment debtor—Small Cause Court can consider the question in proceedings under S. 52—But it has no jurisdiction to make a final determination on the question*

A Small Cause Court can consider the question of a legal representative's lien on immoveable property of the Judgment debtor for the purpose of determining whether execution should proceed, but it has no jurisdiction to make a final determination on the question. (*Weston J. C.*) HIRA LAL v. NAND RAM.

1935 J. 47.

——S. 52—*Enquiry as to assets to be made in Execution Proceeding and not before Decree*

Whether there is any estate left by the deceased is a question to be decided at the time of Execution of decree. (*Macklin J. C*) RATI RAM v DHAPLI.

5. J. 2 (II).

——S. 55 (4)—*Surety bond for appearance—Judgment debtor filing insolvency petition—Surety not discharged:*

The fact that the judgment-debtor has filed a petition in insolvency does not operate to discharge the surety, *46 B 702* **Foll.** (*Jolly J. C*) TEJ PAL v JAI KISHORE.

4 J. 6.

——S 60 (1) (c)—*Town residence can be attached if agriculturist uses another house for agricultural puposes*

Under Section 60 (1) (c) of the civil Procedure Code a town residence of an agriculturist debtor is attachable when he has another house which is used for agricultural purposes. But where he has no habitable house on his land and the house in the town is the only one that he

CIVIL PROCEDURE CODE (1908), S 60

actually lives in and uses for the purpose of keeping his cattle, the house in the town is exempt from attachment In such a case it is immaterial that he has another house on his land in a dilapidated condition which would be available for purposes of residence if it were put in order, *7 B L R 685* **Rel** *49 M 227, 7 B 550* and *45 I.C 546* **Dist** (*Macllin J C*) JAWAHIR MAL v. GAYANA

5 J 45

—**S. 60 (h) and (i)**—*Leave pay—Less than salary—It is wholly exempt*

The word 'salary' in clauses (h) means the pay of a post drawn by a man on duty, while the word 'allowance means all that the incumbent receives in the shape of leave etc while absent from duty The leave pay is worked out at the average pay for the preceeding 12 months and if it is less than the salary of the post it is wholly exempt from attachment under section 60 (h) C P C (*Jolly J C*) B BHAGWAT SARAIN v RADHEY SHIAM.

4 J 37

—**S. 60 (i)**—*Indian army Officer s pay —A moiety is attachable*

(c) Before 1914 the pay of an officer of the Indian army who was a public servant was exempt from attachment under S 60 of the C P C but after the amending act of 1914 a moiety of such pay is now attachable *39 I C 92* and *43 B 716* **Foll** (*Bailee J C*) J R DAJI v G R HUGHES.

1926 S 31

—**S 73**—*Execution application sufficient —Attachment not necessary*

CIVIL PROCEDURE CODE (1908), S 95.

For purposes of rateable distribution it is not necessary to attach the property, mere making of an execution application before sale proceeds are received is sufficient (*Jolly J C*) BANSI LAL v. SAFIUDDIN.

3 J 6

—**S 89**—*Does not alter old law*

S 89 of the Civil Procedure Code (1903) does not alter the old law at all, the words 'any other law for the time being in force' do not refer to statute law alone, *43 A 108*, *51 B 908*, *51 M 800* **Foll** 49 *C.* 608 and 1933 *Lah* 146 **Not applicable** (as they applied to award made *without intervertion of the Court during* pendency of the suit) (*Norman J C*) AMBA LAL v HARI SHANKAR

1934 J 81

—**S. 92**—*Decree not exhausted by mere inaugration of scheme—Courts duty to work the scheme*

A decree passed in a suit under S. 92 C P C is not exhausted by mere inaugration of the scheme decreed but the court passing the decree imposes a duty on itself to keep the machinery of the management going on in accordance with the scheme inaugiated (*Murphy J C*) THE GENERAL MANAGER COURT OF WARDS, v AFZAL HUSSAIN.

2 J 81

—**S 95**—*Security furnished before attachment—Section has no application*

(a) When security is furnished by the defendant before an attachment is actually effected no application under S 95 C P C. lies (*Murphy J C*) BALU RAM v. FIRM PARAS RAM GULAB CHAND

1927 S 17.

——S 95—*Attachment when effected*

(*b*) When property is actually attached and entrusted to the person who gives security for the defendant, the attachment is effected within the meaning of S. 95 C P C, *1925 Bom*. 357 **Dist** (*Baker J. C*) FIRM N C KANKARIA & CO. v. MOHAMED HUSSAIN.

1925 S 17

——S. 95—*Attachment on insufficient grounds—It necessarily causes damage*

(*c* An order for attachment made on insufficient grounds must necessarily cause damage to the credit and reputation of the opposite party 32 *Mad* 170 and *12 I C* 507 **Foll** (*Baker J C*) N. C. KANKARIA & CO v. MOHAMED HUSSAIN

1925 S 17

——S 95 –*Damages—Attachment on insufficient grounds –Compensation is awardable*

(*d*) Damages are divided in three classes —

(*a*) Damages to a man's fame (*b*) Damage done to the person and (c) Damage to a man's property. When no physical damage has been done no question of 'mental and Physical damage' arises But when an attachment is effected on insufficient grounds compensation is awardable and it matters very little by what name the damages are described (*Baker J C*) FIRM N. C. KANKARIA & CO v. MOHAMED HUSSAIN.

1925 S 17

——S. 95—*Order awarding damages—Need not form part of decree*

(*c*) Under the new Civil Procedure Code it is not necessary that the order awarding damages under S 95 should form part of decree 17 *M.L.J* 310 **Not Appl.** (*Baker J C*) FIRM N. C KANKARIA & CO. v. MOHAMED HUSSAIN.

1925 S. 17.

——S 96—*Abatement as a whole—It is in the nature of dismissal—Appeal lies*

(1) The Civil Procedure Code does not contain any specific provision for the abatement of a suit or an appeal as a whole when the right to sue or appeal does not survive. Such an abatement is really in the nature of a dismissal of the suit or appeal as incompetent and amounts to a decree. Consequently an appeal lies from such an order. 17 *A*. 172 and 20 *M L J*. 214 **Ref** 1 *L*. 582 **Foll.** (*Joll J C*) KAJORI MAL v. BEHARI LAL.

4 J. 77.

——S 96 and Sch II, Para 16 (2)—*Decree on award—No appeal Revision doubtful*

An appeal against a decree based on an award is incompetent and it is very doubtful whether even a revision application would lie A new objection against an award cannot be allowed in revision. (*Jolly J. C*) HIRA v. LALA

***5 J 1 (J).**

——S 96—*Successful defendant can appeal if decree negatives a right claimed by him*

(*a*) A defendant has a right of appeal, even when the decree is not on the face of it against him, if it impliedly negatives a right claimed by him against the plaintiff

CIVIL PROCEDURE CODE (1908), S 99.

or the other defendants 21 A. 117 and 9 C W. N. 584 **Rel** (*Broomfield J C*) MST. KAJJI v NANNE KHAN

3 J. 64.

——**S 99**—*Suit triable by munsif—Trial by Sub judge—Mere irregularity*

(*f*) The trial by a Sub Judge of a suit triable by a Munsif is a mere irregularity curable by S 99 C P C, 2 A M L 9 **Foll** (*Jolly J. C.*) PAHLAD v. BALA PERSHAD.

4 J 61

—**S 100**

Burden of Proof

Costs

Documentary Evidence,

Findings of Fact

(i) when interference

(ii) when no interference

Joint Family Property

Malicious Prosecution

New Point

Relief.

Respondent

Title.

Burden of Proof.

——**S 100**—*Burden of Proof—Whether correct conclusion drawn regarding discharge of onus is inference of law*

(2) Whether correct conclusions had been drawn by the lower courts from the facts proved regarding discharge of onus is an inference of law and a second appeal lies 29 *I C* 218 **Diss** 1926 *P. C* 77 **Rel** (*Shannon J C*) ABDUL BASHIR v MST. BISMILLAH BIBI

5 J 36

CIVIL PROCEDURE CODE (1908), S. 100.

Costs.

——**S 100 and S 35**—*Costs—Principle involved—Second appeal lies*

(*a*) a second appeal would lie with regard to costs where question of principle is involved (*Baker J C*) S. GADH MAL LODHA v. ABDUL RAHMAN.

1926 S. 38

——**S. 100 and O 41, R. 22**—*Costs—Varying order of costs of trial Court in absence of appeal or Cross Objections is wrong*

Trial Court orders each party to bear its own costs The lower appelate Court's order is, 'I dismiss the appeal with costs in both courts'.

Held, This is a slip If an appeal is dismissed the order of the Court below including its order for costs stands. That order can only be set aside on appeal or cross-objection (*Norman J. C*) GHASI RAM v BADULLA

***1934 J 26.**

Documentary Evidence.

——**S 100**—*Documentary Evidence—Construction of a document is question of law*

The question of the construction of a document is a question of law which may be taken in Second Appeal, 2 *A. M L. J* 38 (73 ?) **Foll** (*Weston J C*) KAN MAL v ASA NAND

1934 J. 113.

——**S 100**—*Documentary Evidence—Appreciation of Documentary Evidence is question of fact*

CIVIL PROCEDURE CODE (1908), S 100

No question of law arises merely because some of the evidence considered was documentary The construction of a document may be a question of law but appreciation of the evidentiary value of statements contained in documents which are not documents of title upon which the suit is based is no more a question of law than is appreciation of statements in the oral testimony of witnesses (*Weston J C*) RAMA v BAKHTI

1935 J 75

——S 100—*Documentary Evidence—Finding of fact arrived from oral Evidence and various documents binding—Legal effect of single document is point of law*

Where a point of fact is to be determined from oral evidence and the construction of several documents no point of law arises but where the legal effect of a single document is to be decided in order to determine the terms of a contract there is a point of law and a second appeal lies (*Norman J C*) DEBI DIN v ANANT MAL.

***5 J 4 (III).**

Finding of fact—when interference

——S 100—*Finding of Fact—Interference—When judge misdirect himself*

Question of fact which ordinarily can not be re opened in second appeal may be re opened when judge has m directed himself on the point (*Norman J C*) MIRZA AHIDUDDIN BEG v SYED MAZDAR ALI.

1934 J 34

——S 100—*Finding of fact—Interference—when no legal evidence or conjecture or witnesses disbelieved on general grounds*

CIVIL PROCEDURE CODE (1908), S 100

A decision on facts can be attacked in Second appeal if it is based not on legal evidence but on mere conjectures Discrediting evidence on general reasons only not affecting the credit of any particular witness is an error in law which allowed the superior court to interfere 1928 *Lah* 737 1924 *Lah* 465 and 29 *I C* 673 **Foll** (*Weston J C*) ABDULLA v NARAIN

***1934 J 143**

——S 100—*Finding of fact—Interference—No evidence or evidence disbelieved for no reason*

When there is no evidence at all for the fact held to be proved or where evidence is disbelieved for no reason at all, High Court will interfere in second Appeal (*Norman J C*) PIROO LAL v JATAN LAL

6 J 1

Finding of fact—when no Interference

——S 100—*Finding of fact—When no interference*

A finding of fact cannot be upset merely on the ground that it is against the weight of evidence nor on the fact that the judge has not in his judgment referred to all the evidence on the record (*Norman J C*) PIROO LAL v JATAN LAL

6 J 1.

——S 100—*Finding of fact—No interference—Where admission of evidence discretionary—Evidence not admitted*

When it is discretionary with a court to admit some evidence and it does not it does not constitute such an illegality as may necessitate interference on the part of a High Court in a Second appeal (*Murphy J. C*) JODHA v RAMA NAND

2 J 67.

Joint family property.

——**S 100**—*Joint family property—Whether property is joint family property—Finding of fact*

(*a*) Whether a property is a joint family property or not is a question of fact (*Jolly J. C*) LACHMI NARAIN v RAM CHANDER

4 J. 22

Malicious Prosecution

——**S 100**—*Malicious Prosecution—Falsity, Malice, want of reasonable and probable cause are findings of fact*

Question (i) whether the complaint was false, (ii) whether it was malicious and (iii) whether it was made without reasonable and probable cause are questions of fact. (*Weston J. C*) ABDULLA v NARAIN

***1934 J 143**

——**S. 100**—*Malicious Prosecution—'Malice' is finding of fact*

Whether there is malice or not is a finding of fact which cannot be challenged in second appeal (*Norman J C*) G CORNELIUS v REV LAKSHMI CHAND

***6 J 6**

——**S 100**—*Malicious Prosecution—'Reasonable & probable cause, 'malice and 'quantum of damages' are findings of fact*

Whether there was or was not reasonable and probable cause or malice are questions of fact so also whether the damages awarded are sufficient or not. No second appeal lies on these points (*Norman J C*) DEPI DIN v ANANT MAL.

***5 J 4 (III)**

——**S 100**—*Malicious Prosecution—Malice and want of reasonable and probable cause are findings of fact*

The findings whether the prosecution was malicious and without reasonable and probable cause are findings of fact. (*Murphy J C*) S ABDUL RAHMAN v DIDAR BUX

3 J. 35

New point.

——**S 100**—*New point—Deed not registered—Objection about inadmissiblity can be taken for first time*

Objection about inadmissiblity of a document on ground of non registration can be taken for the first time in second appeal (*Jolly J C*) M SUNDERSAN DASS v GULAB CHAND.

***3 J 4.**

——**S 100**—*New point—Cannot be raised which cannot be settled without a finding of fact*

It is not open to a party in Second Apeal to raise a new point which cannot be settled without a finding of fact either in the trial Court or in the lower appellate Court (*Norman J C*) AMAR CHAND v KANA

***1934 J. 101**

Relief

——**S 100 and O 7 R 7**—*Relief—High Court can grant proper relief even though not claimed in lower courts if facts stated in plaint*

(*a*) In view of O 7 R 7 C P C there is nothing to prevent the High Court in Second Appeal from granting the proper relief to a plaintiff even though it was not

claimed by him in the lower courts where the facts on which such a relief can be granted are sufficiently stated in the plaint 27 *N L R* 327 and 27 *A* 321 **Rel** (*Macklin J C*) NARSINGH DAS v NARAIN DAS

5 J 73

Respondent

——**S 100 and O 41, R 22**—*Respondent—Cannot re open findings of fact*

(1) A respondent in a Second Appeal cannot re open issues of fact decided against him by way of filing cross objections (*Jolly J C*) KAN MAL v ASA NAND

4 J 84

Title

——**S 100**—*Title—Is question of fact*

Title, unless it depends upon the construction of a single document, is a question of fact which cannot ordinarily be gone into in Second Appeal (*Norman J C*) HARI DAS v MUNICIPAL COMMITTEE AJMER

1934 J 61

——**S 102**—*A small cause suit tried as regular suit—No second appeal*

If a Small Cause Suit is tried as a regular suit even then S 102 of the C P C applies and no second appeal lies (*Baker J C*) KAN MAL v LAKHMI CHAND

1926 S 17

——**S 102**—*Suit of a nature cognizable by S C C Act—No second appeal*

(b) (i) No second appeal lies if the suit is of the nature cognizable by the Court of Small Causes

(ii) It is the nature of the suit and not the manner in which it is tried which determines whether a second appeal lies or not, 57 *I C* 557 **Foll** (*Baker J C*) MST BACCHI v DEBI PRASAD

1 J 25

——**S 102**—*Does not bar Second Appeal in rent suit not cognizable by the Small Cause Court*

A rent suit which is not congnizable under Art 8 of the Provincial Small Causes Courts Act by a Court of Small Causes for want of a notification by the Local Government as required by that Article is not a suit of the nature congnizable by a court of Small Causes within the meaning of S 102 of the Civil Procedure Code and a second appeal is not barred in such a suit 23 *M* 547, 41 *B* 367 **Dist** 42 *C* 638 & 37 *I C* 980 **Foll** 3 *R* 390 **Diss** (*Norman J C*) SHIVE CHARAN v L FATEH LAL

5 J 78

——**S 104 (1) (c)**—*Execution of award under Co operative Societies Act—Appeal lies*

An appeal lies on a question concerning execution of an award under the Co operative societies Act 1926 *Lah* 547 **Foll** 40 *A* 89 **Dist.** 1925 *Cal* 203 **Disc** (*Broomfield J C*) M LAKSHMI NARAIN v LAL CHAND

5 J 30

——**S 104 (1) (ff)**—*No second appeal against an appellate order refusing special costs*

No Second Appeal lies against an appellate order refusing special costs (*Norman J C*) AZIZUDDIN v MADHO RAM

1936 J 149

——S. 104 (1) (g)—*No application to orders by Small Causes Court*

(*a*) A revision would lie against an order of the Small Causes Court under S 95 C P C as S 104 clause (g) has no application to orders of that Court, 50 I C 886 **Foll** (*Baker J C*) FIRM N C KANKARIA & CO. v MOHAMED HUSSAIN
1925 S 17

——S. 104 (2) and O 43, R 1 (k)—*Abatement set aside—No second appeal*

No second appeal lies agaisnst an order passed on an application made under O 22, R 9 C P C (*Murphy J C*) SUNDER LAL v MST SUGNI
3 J 19

——S 105—*Ex parte Proceedings in suit—Their propriety can be considered*

(*b*) The propriety of ex parte proceedings can be considered by the Appellate court even in an appeal on merits 30 M 54 and 46 *B* 184 **Foll** 23 *C* 738 2 *R* 108 and 39 *A* 143 **Diss** (*Broomfield J C*) MST KAJJI v NANNE KHAN
3 J 64

——S 105—*Scope—Order setting aside ex-parte decree or abatement—Cannot be challenged in appeal*

The words 'affecting the decision of the case mean affecting the merits of the case An order setting aside abtement or an ex parte decree is not an order affecting the merits of the case Such an order therefore cannot be challanged in appeal within the meaning of S 105 *56 C 21, 57 C 472 47 A 555 51 B 135 and 6 L 91* **Foll** (*Jolly J C*) PARTAB MAL v RAMA NAND
4 J 19

——S 105 & 115—*Revision does not ordinarily lie when appeal lies from decree except when defeat of law and grave wrong are manifest and are not remediable by regular procedure*

Although instances exist where High Courts have interfered in Revision when relief possibly could have been obtained at a later stage by appeal the general principle is that where an appeal is provided the court will not interfere by any peremptory order with the ordinary course of adjudication save in cases wherein a defeat of law and a grave wrong are manifest and irremediable by regular procedure *7 B 341 1 A M L J 1 1 A M L J 29 3 A. M L J 53 (at page 56)* and *5 A M L J 97* **Foll** (*Weston J C*) MAULA BUX v SOBHAG MAL
1934 J 105

(N *B* —Full References to cases are given under S 115— Interlocutory order and other remed)

——S 109 (c)—*Certificate*

When a suit cannot be valued in money a certificate of leave to appeal to Privy Council can be granted only under S 109 (c) (*Norman J C*) GANGA DHAR v BENI GOPAL
***6 J 4**

——S 110 1) & (2)—*Scope*

(*a*) The clause (*2*) of S 110 C P C is to be read as an alternative to the whole of the clause (1, and not merely as an alternative to the second restrictions in clause (1) *1925 Ran 71* **Dist** *59 M 513* and *21 A, 171* **Expl**

CIVIL PROCEDURE CODE (1908), S 114.

(b) Where the decision in appeal affects interest in property of the value of ten thousand rupees or upwards even though outside the immediate subject matter of the suit Clause (2) of S 110 would apply. The criterion for the application of Clause (2) is the value of the detriment to the party seeking leave arising directly or indirectly from the decision in appeal (*Jolly J. C*) R S P CHANDRIKA PRASAD v B B & C I Ry

4 J 52

—S **114**—*See under, 'C P. C —O 47'*

—S 115

Amendment
Appeal.
Award
Court Fees
Discretion
Error of Law
Interference
Interlocutory order.
Jurisdiction
Liberal Interpretation
Limitation for Revision
No Interference
Other Remedy
Scope

Amendment

—**S 115 and O 6, R 17**—*Amendment—An order refusing amendment is a 'case decided'*

A refusal to allow an amendment is a case decided within the meaning of S *115*, *1935 All 3*[illegible] Foll (*Weston J. C*) CHAND MAL v MOHAMMAD HUSSAIN

1935 J 100

CIVIL PROCEDURE CODE (1908), S 115

—**S 115**—*Amendment—Refusal to allow amendment not revisable*

(*d*) Refusal to allow an amedment of the pleadings is not open to revision, *1 A M L J 1 7* (2) and *29*, *2 A M L J 17* **Rel** *C. R 57 of 1928* **Not Appr** (*Broomfield J. C*) KHADIMS OF DURGAH KHWAJA SAHIB v DIWAN ALEY RASUL KHAN

3 J. 53

—**S 115**—*Amendment—Order refusing amendment—Is interlocutory—No Revision*

(*a*) An order refusing amendment of plaint is interlocutory and no revision lies (*Murphy J. C*) GOPI KISHEN v. RAM PAL.

1925 S 21

Appeal

—**S 115**—*Appeal—Second appeal can be treated as Revision application*

When the Lower Appellate court has acted in the exercise of its jurisdiction illegally and with material irregularity the High Court can treat the memo of second appeal as revisional application and revise the lower appellate court's order (*Murphy J C*) AZAM ALI v MST NANNI BIBI

3 J. 13

Award

—**S 115**—*Award—Procedure and order revisable*

(*a*) An award is intended to have finality but the better opinion seems to be that revision is admissible for the purpose of setting right the procedure and ord

CIVIL PROCEDURE CODE (1908), S 115.

of the Judge dealing with the objections 36 *Bom* 105 **Rel** (*Murphy J C*) BHANWARI LAL v. FIRM GHISA LAL.

1927 S 26

——**S 115**—*Award—Revision lies in suitable cases.*

A revision application would lie to the High Court if the court proceeds in such a manner so as to come within the ambit of section 115 C P C (*Jolly J C*) CHAGAN MAL v NAND MAL

***3 J. 1**

Court fees

——**S. 115**—*Court Fees—Revision lies*

Revision lies on question of Court Fees 55 *A* 274 **Foll.** (*Norman J. C*) CHAIBRI BAI v NOOR MOHAMAD.

6 J. 46

Discretion.

——**S 115**——*Discretion——Interference when discretion allowing further evidence not judicially exercised*

Assuming that the trial court had discretion to allow evidence at late stage that discretion was to be exercised judicially When there has been no exercise of judicial discretion High Court will interfere (*Weston J C*) F SHEO CHAND RAI SHEO NARAIN v 1 GIRDHARI LAL KHUSHI RAM

1935 J 118

Error of Law

(*Also see* under sub heading— No Interference , below)

——**S 115**—*Error of Law—Interference—Only if Lower Court has ignored Statutory provision or put obviously impossible interpretation*

CIVIL PROCEDURE CODE (1908) S 115

If a judge has in coming to his conclusion entirely ignored a provision of Statute Law or if he has given to a provision of Statute law an obviously impossible interpretation that would justify interference in revision But interference in Revision is not permissible if the Judge has considered the law and his interpretation of it is a possible one even though that interpretation be contrary to the interpretation put upon in decided cases, 1935 *Bom* 272, 1935 *Cal* 102 1935 *All* 353 and 1925 I M *L J Supplt* 9 **Disc** (*Norman J C*) KINTOO LAL v DAULAT RAM.

1936 J 4

——**S 115**—*Error of Law—No revision on ground that decision is erroneous*

(*a*) When a court has jurisdiction to decide a point it can decide it rightly or wrongly and no revision lies on the ground that the decision is errorneous, 45 *A* **Foll** 48 *M L J* 349 **Diss** (*Broomfield J C*) KHADIMS OF DURGAH KHWAJA SAHIB v DEWAN SYED ALEY RASUL KHAN

3 J. 53

——**S 115**—*Error of Law—Trial Court's view wrong—Still no Revision*

If a court exercised jurisdiction invested in it but its view on the point involved is wrong it cannot be said that the court refused to exercise jurisdiction (*Murphy J C*) SUNDER LAL v MST SUGNI.

3 J 19

——**S 115**—*Error of Law—Revision lies on error of jurisdiction but not on wrong decision—High courts have interfered to correct gross and palpable errors of law or fact*

CIVIL PROCEDURE CODE (1908), S 115

When a court of inferior jurisdiction has made an order which it is not empowered to make, that is to say, when it has erred as to the extent of its jurisdiction a High Court can interfere but when it does so because of a mistaken view of the existence or extent of his rights the High Court cannot interfere under S 115. Merely to decide wrongly is not illegal or irregular

It is true that the Law Reports contain cases in which eminent Judges have interfered to correct gross and palpable errors of law or fact, 11 C 6 40 *I. C* 650, 51 *I. C* 873, 45 *A.* 425 and 41 *C* 323 **Ref** (*Bakr J C*) MADAN LAL v. GOKAL CHAND

2 J 16.

——**S 115**—*Error of Law—Wrong determination no ground for interference*

Section 115 is exclusively concerned with the question of jurisdiction Wrong determination is not failure to exercise Jurisdiction (*Baker J C*) MOTI LAL v. MITSUI BHUSAN KAISHA LTD.

1 J 29

——**S 115**—*Error of Law—Wrong decision in final decree on law point—No Revision.*

(*b*) A wrong decision in a final decree, that is a decree not subject to appeal, on a point of law involving no question of jurisdiction is not subject to revision. (*Murphy J C*) LADU RAM v. R B S CHAMPA LAL

1925 S 11

——**S 115**—*Error of Law—Wrong decision on Limitation—No revision*

CIVIL PROCEDURE CODE (1908), S. 115

(*b*) A wrong decision on a question of limitation is not *per se* ground for interfering in revision either under S. 115 of the C P. C. or S. 25 of the Small Cause Court Act, especially when substantial justice between the parties has been done by the Lower court (*Murphy J. C*) SANWAL RAM v NANHEY KHAN.

1925 S. 6

——**S 115**—*Wrong decision no ground for revision—But Revision lies where disregard of law*

(*b*) Where a Court has applied its mind to the law and decides wrongly there is no revision but when it disregards some provisions of law and has not applied its mind to that provision a revision lies. 82 *I C.* 658 **Reli** (*Baker J C*) JUG RAJ v MAYA RAM

1926 S. 6.

Interference

——**S 115**—*Interference—When no reasons given*

When no reasons are given by the lower Court for its decisions it is open to the High Court to go into the point (*Norman J. C*) MD HASMAT ULLAH v. BASTI BIBI

6 J 27.

——**S 115**—*Interference—Point not raised in appeal but raised in review—Lower Court rejected it on wrong view of law—It can be revised in Revision*

Where appellant wants to be allowed to argue to the extent of Court fee paid within limitation, this ought to be put forward by him as an alternative plea when the appeal is argued But when this plea was urged in review application

which was rejected on a wrong view of law and not on the ground that it was not urged in appeal, it is open to the High Court to allow it to be raised in revision (*Norman J. C*) MD HASMAT ULLAH v BASTI BIBI.

6 J 27.

——**S. 115**—*Interference—Entertainment of an application presented by a person not legally entitled to present it—involves a question of jurisdiction*

(1) The entertainment of an application by a person not legally entitled to present it is a question of jurisdiction (*Norman J C*) GOPI NATH v. BHANWAR LAL

5 J. 89

——**S 115**—*Interference—Suit decided on an issue not framed—Material irregularity*

Where a court decides a suit on an issue which has not been framed the court exercises its jurisdiction with material irregularity (*Jolly J C*) MOOL CHAND v. SRI KISHEN.

***5 J. 3 (I)**

——**S 115**—*Interference—Court restored suit (or set aside exparte decree) contrary to O 9*

(c) If a court purports in the exercise of its inherent jurisdiction to act otherwise than in accordance with the provisions of O. 9, R 9 or R 13, it must be held to have exercised a jurisdiction not vested in it by law. (*Jolly J C*) GORDHAN DAS v B B & C I RY.

4 J 39

——**S 115**—*Interference—Fixing of instalments—Judical Act*

(a) Discretion to fix instalments is a judicial discretion and failure to exercise it in a judicial manner is a valid ground for interference in revision, *7 L.* 393 and 11 *C L J.* 431 **Foll** (*Jolly J. C*) FIRM BRDHI CHAND SUGAN CHAND v. MOTI LAL.

4 J 76

——**S. 115**—*Interference—When finding based on irrelevant evidence or no evidence*

Where a finding of fact is entirely unsupported by evidence or based on irrelevant evidence it amounts to an illegality and can be interfered with in revision *9 A 398* **Foll** (*Jolly J. C*) MANGILAL v. GOPALJI.

***4 J. 2.**

——**S 115**—*Interference document admitted—But subsequently rejected in violation of Stamp Act, S 36*

(a) A rejection of a document, which has been admitted in evidence, for want of a stamp in violation of S 36 of the Stamp Act is a ground for revision, *18 Bom 737* **Foll.** *3 C W N 381* **Diss** (*Baker J C*) JUG RAJ v. MAYA RAM

1926 S. 6.

——**S. 115**—*Interference—Review allowed—Wrong order*

(c) A revision lies against a wrong order allowing review (*Murphy J. C*) GANESH DAS v. INDER BHAN

1925 S 1.

——**S 115**—*Interference—Lower Appellate Court dismissed appeal—But ordered trial court to vary decree*

(c) An Appellate court while dismissing an appeal and confirming the Lower Court's decree cannot direct the Lower

CIVIL PROCEDURE CODE (1908) S 115

Court to make a fresh decree on a new basis of calculation Its so acting would amount to a material illegality and irregular exercise of Jurisdiction (*Murphy J C*) FIRM SOORAT RAM POONAM CHAND v FIRM JHUNTA LAL KALYAN MAL

1925 S 2

——S 115(c)—*Interference—Mortgagee claiming through mortgagor land from third party—Mortgagor not impleaded—Suit decreed—Non joinder of mortgagor is material irregularity*

Plaintiffs claimed certain land as mortgagee from F and asked for declaration of title and for possession The main question arose whether land in dispute was included in the mortgage by F. Suit was decided without impleading F as a party

Held, It was material irregularity and revision lay (*Viscount Haldane Lord Darling and C J Anglin*) DEWAN BAHADUR SETH UMEDMAL v CHANDMAL

1 J 33=A I R 1926 P C 142 =53 I A 271=25 A L J 61 =25 M L W 90=3 O W N 989 =1927 M W N 84=99 I C 749 =29 B L R 755=55 C L J 274 =I L R 54 C 338=31 C W N 413 =28 P L R 113=52 M L J 368 =8 P L T 251

Interlocutory order

S 115——*Interlocutory order—Interference—Only when in addition to other requirements the order causes irreparable injury*

Every order which would if incorrect cause irreparable injury is not open to revision If an order sought to be revised

CIVIL PROCEDURE CODE (1908), S 115

is interlocutory the applicant must in addition to showing that it otherwise falls within the scope of S 115 show that it causes irreparable injury (*Norman J C*) KINTOO LAL v DAULAT RAM

1936 J 4

——**S 115 and S 105**—*Interlocutory order—Revision does not ordinarily lie when appeal lies from decree except when defeat of law and a grave wrong are manifest and are irremediable by regular procedure*

Although instances exist where High Courts have interfered in Revision when relief possibly could have been obtained at a later stage by appeal the general principle is that where an appeal is provided the court will not interfere by any peremptory order with the ordinary course of adjudication save in cases wherein a defeat of law and a grave wrong are manifest and are irremediable by regular procedure *7 B 341 1 A M L J 1 1 A M L J 29 3 A M L J 53* and *5 A M L J 97* **Foll** (*Weston J C*) MAULA BUX v SOBHAG MAL

1934 J 105

(V *B*—Also under S 115—Amendment Award Court of other Remedy)

——S 115—*Interlocutory orders—Revisable if grave hardship and injustice*

(1) A revision would lie against an interlocutory order if it entails grave hardship or injustice (*Norman J C*) GOKAL CHAND v THE MANAGER, MEHRUN KALAN ESTATE

5 J 97

CIVIL PROCEDURE CODE (1908), S 115.

——**S. 115**—*Interlocutory order—Revised to prevent grave hardship and injustice*

(c) Even an interlocutory order can be revised in a proper case when it is necessary to prevent grave hardship or injustice (*Broomfield J. C*) KHADIMS OF DURGAH KHWAJA SAHIB v. DEWAN ALEY RASUL KHAN.

3 J 53.

——**S 115**—*No Revision against interlocutory order*

(b) No revision lies against interlocutory order, *63 I. C. 15* **Foll.** (*Barlee J C*) MST NANHI BIBI v. MAHMAD ALI

1926 S 25

Jurisdiction.

——**S 115**—*Jurisdiction—Wrong decision of Court that it has or has not jurisdiction—Revisable if not dependant on facts*

(2) A wrong finding on the question whether a court has or has not jurisdiction is open to revision But when the question depends on facts, and not on law it is not revisable, *1 Pat L J. 340* and *11 M 554* **Foll.** *15 All 125* **Diss** (*Norman J. C*) GOPI NATH v BHANWAR LAL

5 J. 89.

Liberal Interpretation

——**S. 115**—*Liberal Interpretation*

A Liberal interpretation should be put upon Section 115 (*Norman J. C*) KINTOO LAL v. DAULAT RAM

1936 J 4

CIVIL PROCEDURE CODE (1908), S 115

Limitation for filing Revision

——**S 115**—*Limitation for filing Revision Application—Reduced to three months*

1934 J 4 (N S)

[——**S 115**—*Ordinary Limitation is six months*

(a) No application for Revision made more than after 6 months from the date of order complained of, will be considered unless good grounds for the lack of reasonable diligence in the matter are shown by the application (*Murphy J C*) SANWAL RAM v NANHEY KHAN

†**1925 S 6**]

[——**S 115**—*No specific Limitation—Yet no revision will be entertained where undue delay*

(a) Though the High Court's Jurisdiction under S. 115 C P C is not subject to any specific limitation yet the High Court *will refuse to entertain such applications* where there has been unreasonable and unaccounted for delay (*Murphy J C*) FIRM SOOLAT RAM POONAM CHAND v FIRM JHUNTA LAL KALYAN MAL.

†**1925 S 2**]

No Interference

——**S 115**—*No interference—When application under S 152 C P C dismissed*

Application under S 152 of C P C dismissed *Held*, No revision lies (*Norman J. C.*) ABDUL RAHMAN v DIDAR BUX

1936 J 117.

——S 115 – *No interference—When Judge refused to extend time*

(3) Even if the lower court s order refusing extension of time is wrong in law no application for revision lies (*Norman J C*) B B & C I Ry v THE EDWARD MILLS CO LTD BEAWAR

5 J 83

——S 115—*No Interference—When finding of fact based on evidence though High Court does not agree with conclusion*

A conclusion of fact arrived at on a deliberate weighing and appreciation of evidence on record cannot be interfered with in revision merely because the High Court doesnot agree with such conclusion (*Jolly J C*) MANGI LAL v GOPAL JI

***4 J 2**

——S 115—*No interference—No final decree—Yet sale after notice to Judgment debtor—Sale not necessarily void*

See C P C – O 21, R 90'.

——S 115—*No interference—When question of law or mixed fact or law*

(2) Questions of law or mixed fact and law, whether rightly or wrongly decided are not questions involving the jurisdiction of the Court its exercise or a refusal to exercise it, or an irregular or illegal exercise of it and are hence not revisable (*Murphy J C*) MIR SYED ALI v DURGAH KHAWAJA SAHIB

1927 S 15

——S 115—*No interference—In matters committed by legislature for final determination of inferior courts*

(*b*) The H C will not *ordinarily* substitute its own appreciation of evidence or facts or its own judgment thereon in any matter committed by the Legislature for the final determination of an inferior court (*Murphy J. C*) SHAMLAT COMMITTEE OF PUSHKAR v PERSHOTAM

1925 S. 9

——S 115 and O 14, R 5—*No interference—Duty of Judge to frame correct issues—Error is irregularity*

(*a*) It is the duty of a Judge to frame correct issues and if he does not do so his error amounts to an irregularity of procedure but no revision lies as it is an interlocutory order (*Barles J. C*) MST. NANHI BI I v. MAHMAD ALI

1926 S 25

——S 115—*No interference—Construction of Document—Is question of law—But no revision*

(*a*) The construction of a document is a question of law but does not involve a question of jurisdiction and no revision lies (*Baker J C*) SOLOMAN v. BALU

1926 S 11

——S 115—*No interference—When refusal to grant ad interim injunction*

When a Court refuses to make an order under O 39, R 1 C P C it is not a refusal of jurisdiction but an exercise of it and is not revisable (*Murphy J C*) SHAMLAT COMMITTEE OF PUSHKAR v. PERSHOTAM

1925 S. 9

——S 115—*No interference—When Advocate General refusing to consent to filing suit under S 92 C P C*

CIVIL PROCEDURE CODE (1908), S 115

An order by the Advocate—General refusing to give his consent to the filing of a suit under S 92 C P C is not revis ab'e as it is not a 'case decided' by any court within the meaning of S 115 C P C (*Murphy J C*) SOHAN LAL v SADA SUKH

1925 S 13

Other Remedy

—**S 115**—*Other remedy —Revision lies when no Second Appeal or reference is competent*

No reference would lie in the present case and a right of reference in certain circumstances would not oust the revi sional jurisdiction of the Court when those circumstances do not exist (*Weston J. C*) ABDUL AZIZ v AMIR ALI

1935 J 102

—**S 115**—*Another remedy—Open—No Revision*

The extraordinary powers under S 115 C P C will not be exercised if there is another remedy open to the applicant (*Baker J. C*) SOLOMAN v. BALU.

1926 S 11

—**S, 115**—*Another remedy—Open—No revision*

A High court will not interfere in revision where there is another remedy open to the applicant (*Baker J C*) MOTI LAL v MITSUI BHUSAN KAISHA LIMITED KARACHI

1 J 29

—**S 115**—*Other Remedy—By way of Appeal open—No Revision*

CIVIL PROCEDURE CODE (1908), S 115

The high Court will not ordinarily interfere in revision when applicant has a remedy by way of appeal (*Murphy J C*) RAJA DIDARBUX v PIR MOLABUX.

1 J 1

—**S 115**—*Other remedy—Reference under Regulation I of 1877 does not bar revision*

Provisions of the Regulation allowing a reference to the High Court at Allaha bad do not oust the revisional jurisdiction of the Judicial Commissioner (*Jolly J C*) MOOL CHAND v SRI KISHEN

***5 J 3 (I)**

—**S. 115**—*Other remedy—Reference open—Still Revision lies*

Even if a reference was or is open to a party under S 17 of the old Court s Regulation, the High Court has power to interfere in revision in a proper case. (*Jolly J C*) S KALYAN MAL v MST DHANTAYA DEVI

***3 J 3.**

Scope

—**S 115**—*Scope—Not economical substitute for appeal*

(*c*) *The remedy under section 115* C P C is not intended to be an economical subst tue for an appeal (*Broomfield J C*) KHADIMS OF DURGAH KHWAJA SAHIB v DIWAN ALEY RASUL KHAN.

3 J 53

—**S 115**—*Scope—Court refusing to Review its judgment*

Revision does not lie against an order of a cout refusing to review it own judgment *26 A. 572* **Foll** (*Murphy J C* NANGA v BADRI PERSHAD

——S. 115 & O 41, R 11—*Scope—Parties not heard in Revision—No ground for Review*

An omission to hear the parties in a revision application is not a good ground for a review (*Murphy J C*) FIRM ACHAL DAS BAL CHAND v FIRM KUNDAN MAL UADI MAL

1 J 6

——S 141 and O 39, R 1 and R 2—*No appeal against order refusing to issue ad interim injunction*

Application under Section 12 of the Guardian and Wards Act to restrain marriage on the ground that the bridegroom was under 18 years of age Court rejected the application *Held*, No appeal lies (*Norman J C*) MR MAHENDRA LAL v MANGI LAL

1936 J 182

——S 145—*Court materially altering the terms—Surety is discharged*

If the Court by its action materially affects the terms of the surety bond without the assent of the surety, the latter is discharged *1935 Nagpur 258* **Approved** (*Norman J C*) NATH MAL v ABDUL HAMID

1936 J 1

——S 145—*Execution application dismissed for default but subsequently restored—Surety bond revives*

A stood surety for the appearance of judgement debtor Execution application dismissed for default in absence of decree holder *Held* the effect of restoration was to restore the position which existed when the execution application was dismissed for default and the surety bond was therefore

revived. *59 Cal. 1150* **Foll** (*Norman J C*) JAWAHAR SINGH v. JAWALA PERSHAD

1936 J 195

——S 145—*If section 135 of the Contract Act not applicable to a bond given to Court the equitable principles on which the section is based apply*

If Section 135 of the Contract Act does not apply to a bond given to the Court the equitable principles on which that section is founded do apply, and a discharge can be given to the surety *1930 Bom 122, 1930 Lah 896* and *56 Mad 625* **Foll** (*Norman J C*) NATH MAL v. ABDUL HAMID

1936 J 1

——S 145—*Acceptance by lower court of surety bond beyond time is without jurisdiction—But surety is liable*

Where the execution of a decree has been stayed by the Appellate Court on the judgment debtor s furnishing security for the decretal amount within a specified period the executing court acts without jurisdiction if it accepts the security beyond the time so specified But this does not affect the liability of the surety to the decree holder under the bond which has been accepted and on which execution of the decree has been stayed even though the executing court had no authority to accept it (*Macklin J C*) R S NATHU SINGH v ADAM.

5 J 69

——S 145—*Insolvency of principal debtor—Does not absolve surety*

The insolvency of a principal debtor does not absolve his surety from liability

CIVIL PROCEDURE CODE (1908) S 148

to pay the decretal amount *28 A 387* **Diss** (*Macklin J C*) R S NATHU SINGH v ADAM

5 J 69

——**S 148**—*Mere Registration is not condonation of delay—Condonation is a judicial act*

Registration of an execution application does not amount to condonation of delay Condonation of delay is a jud cal act and therefore to be performed after hearing both sides Registration of the *darkhast* could only mean that condonation was allowed subject to objections When objection by the judgment debtor is made the trial court should consider jud cially whether there are sufficient grounds for condoning the delay (*Norman J C*) RAM DUTT v CHATUR BHUJ

1936 J 110

——**S 145**—*Conditional decree becoming final—Trial court cannot extend time—Review is proper remedy*

When a conditional decree becomes final on the failure of the judgment debtor to comply with its terms it is incapable of being varied by the orig nal court except by means of a review *55 All 552* **Rel** S 148 of the C P C has no application after a decree has been passed (*Murphy J C*) MST NATHI v JAGRUP

1927 S 22

——**S 149**—*Applicable to judicial order in which judge exercised his discretion and not to office note initialled by by judge*

(2) Section 149 means that the court must consider whether time ought or ought not to be granted

CIVIL PROCEDURE CODE (1908) S 149

An office note to which the judge merely appends his initials is not a judicial order because the Judge does not exercise his discretion at all (*Norman J C*) B B & C I Ry v THE EDWARD MILLS CO LTD BEAWAR

5 J 83

——**S 149**—*Payment of deficient court fees*

Payment of deficient court fees within a period allowed by the court has the same effect as if the fee had been paid in the first instance (*Weston J C*) MOHAMMED HANIF v SYED HABIB HUSAIN

1934 J 111

——**S 149**—*Appeal insufficiently stamped—It ought to be heard up to the value of the Court Fee paid*

An appellant whose prayer for time to make up deficient Court fees has been rejected ought to be heard up to the value of the Court fee paid in time *10 I C 207 1926 Lal 58 & 1931 Lah 257* **Foll** *26 I C 746* **Dist** (*Norman J C*) MD HASMAT ULLAH v BASTI BIBI

6 J 27

——**S 149 and O 7 R 8** *Several reliefs but not separately valued—Appellate Court will not hear Suo motu*

Where the reliefs are several and are not seperately valued it is not poss ble for a Court of Appeal to hear the appeal up to the value of the Court fee pa d within limitation suo motu without an application to amend the memorandum of appeal. *1931 Lah 257* **Doubted** (*Norman J C*) MD HASMAT ULLAH v BASTI BIBI

6 J 27

CIVIL PROCEDURE CODE (1908), S 151.

Held, that the order of dismissal for default cannot be construed as one rejecting the plaint. In the present case the order should be considered as an order under S. 151 C P C and that suit could be restored under the same section. *1926 A. M. L. J. Supp 41* **Dist.** *(Norman J. C)* PAHARA v. RAM BILAS.

5 J 103

——**S 151**—*Restoration—Suit dismissed for default* (or *decreed ex parte*)—*No sufficient cause shown to restore it (or set it aside)—S 151 has no application.*

(*b*) Where no sufficient cause is shown a court has no inherent power to restore a suit dismissed for default under S 151 C. P. C. Similarly a court has no inherent jurisdiction to set aside an ex-parte decree otherwise than as provided by *O 9, R. 13, 48 A 175, 43 M 94, 1 P. 277, 48 C. L J. 596* **Foll.** *34 A 426, 26 M 599, 44 B. 82, 45 B. 648* and *4 R 28* **Diss** *(Jolly J. C)* GORDHAN DAS v. B B & C I RY

4 J 39.

——**S 151 and O 9, R. 9**—*Restoration—No restoration under S 151 if no sufficient cause*

(*a*) A suit dismissed for default cannot be restored under S. 151 if no sufficient cause is shown under *O 9, R 9, 1927 Cal 158, 1927 Pat. 369, 1925 All. 610* and 1927 *Lah* 622 **Foll** 53 *I C* 252, 58 *I C.* 748, 1927 *Ran* 58 and 1927 *A. M. L. J. Supplt.* 20 **Diss** (*Shannon J. C*) MOTI LAL v. HINDU

3 J. 69.

[——**S 151**—*Suit dismissed for Default—No "sufficient cause"—Still court may restore it:*

CIVIL PROCEDURE CODE (1908), S 151

(*a*) Even if there is no 'sufficient causes' for default the Courts have inherent powers under S 151 C. P. C. to restore a suit dismissed for default in proper circumstances (*Murphy J C.*) LACHMI NARAYAN v. RADHA RAMAN

1927 S 20.]

(III) Execution.

——**S. 151**——*Restoration——Execution application dismissed for default—Court has inherent power to restore it*

A court has inherent power to restore an execution application dismissed for default. (*Norman J. C.*) JAWAHAR SINGH v JAWALA PERSHAD.

1936 J. 195

Review.

——**S 151 and O.47, R. 1**—*Review—New authority—No ground for Review*

(*c*) An order which cannot be reviewed on the ground of wrong exposition of law cannot also be reviewed under S. 151 C P. C A Court cannot alter its order under S 151 because it subsequently changes its mind (*Baker J C.*) FIRM LAL CHAND BADRI NARAIN v. FIRM HIRA LAL JAGAN NATH.

1926 S. 19

——**S. 151 and 152**—*Order drawn up and signed—When amended*

(*d*) A court can amend its order after it has been drawn up and signed only in two cases

(1) When the decree or order does not correctly state what the court actually decided or intended. This is done under its inherent power.

(2) When there has been a clerical or arithmetical mistake or an error arising from an accidental slip or omission This is done under S 152 C P C (*Baker J C*) FIRM LAL CHAND BADRI NARIAN v FIRM HIRA LAL JAGAN NATH

1926 S 19

——S 152—*Scope*

When a decree does not specifically and correctly state what the court actually decided and intended the proper course for the decree holder will be to apply to the court granting decree under S 152 C P C (*Murphy J C*) LAL CHAND v. GHISU LAL

3 J 38

——O 1 R 8—*Formal order immaterial*

When necessary notice is issued on an application under O 1 R 8 it is immaterial whether any formal order indicating permission under the rule has or has not been recorded The suit is to be deemed a representative suit (*Jolly J C*) BAGICHI DALLALAN v HIRA DAS

***3 J 8**

——O. 1, R 8—*Order made in trial court—Form not to be repeated in higher courts*

When once an order has been made under O 1 R 8 and the representative parties have been determined by the trial court, it is not necessary to go through same form in each successive court, *51 I C. 137* Foll (*Murphy J C*) P SAWATI PERSHAD v. P MAHBIR PERSHAD

2 J 55

——O. 1, R. 10—*"Firm"—To describe Hindu joint family business—The word is a mis description—Amedment allowed*

The use of the word 'Firm" in the plaint to describe a Hindu Joint family business is a case of mis description. Opportunity to amend may be given. (*Norman J C*) FIRM HAZARI MAL GULAB CHAND v FIRM DOLAT RAM KUNDAN MAL.

1936 J. 130

——O 1 R. 10—*Suit wrongly filed in name of Firm—Amendment after limitation—No bar to suit*

Where a man gives his business a name which suggests several partners it does not turn that business into a firm. The name is merely an alias for the proprietor of the business. If in such a case a suit is filed under that alias and is subsequently amended after limitation by substituting the plaintiff's proper name the case is one of mis description and not substitution of parties and the suit does not become time barred (*Norman J. C.*) B P BHARGAVA v GHISU LAL.

5 J 111.

——O 1, R 10—*No addition of party where vague assertions of being interested in the property*

The applicant made vague assertions that she was interested in the property. She gave no indication as to the amount of her interest, how it was derived or whether she was in possession, *Held*, the Court was not bound on such allegations to make her a party. (*Weston J. C*) KESAR v DHOOL CHAND.

1935 J. 66.

——O 1, R 10—*Suit by one joint promisee—Addition of the others after limitation—Entire suit time barred*

(2 If a suit is brought by only one of the joint promisees and the others are joined after the limitation the result is that the suit is barred by time in its entirety *6 C 815* **Foll** (*Maclin J C*) DHAN RAJ v KALU.

5 J. 51.

——O. 1, R. 13—*Plaint not signed by one of several plaintiffs—No repudiation by non signing plaintiff—Defendant did not assert at proper time that non-signing plaintiff had not consented—Absence of signature immaterial*

Failure to sign the plaint by one co plaintiff is immaterial The inclusion of the non singing plaintiffs in the plaint was an assertion that they consented, which in the absence of any denial by the other side should be accepted *17 C. 580* **Ref** (*Norman J C*) RAJDAR KHAN KANHIYA LAL

1936 J. 141.

——O 2, R 1 & R 4 *Plaintiff entitled to claim possession - Can sue at his peril for mesne profits only—Court cannot refuse a decree for mesne profits*

Even if a plaintiff be entitled to claim possession he can sue only for damages at his peril and the court cannot refuse a decree for mesne profits if found due (*Barlee J C*) LADU v BALA PERSHAD

2 J 23

——O 3, R 2—*Local amendment*

See, Notification by J. C

1934 J 2 (N S)

——O, 3, R. 4 (1)—*A person authorised under power of-attorney to appoint a Pleader can do so though he may not be recognised agent*

A person duly authorised by or under a power of attorney to appoint a pleader can do so though he may not be recognised agent within the meaning of O 3, R. 2 of the Civil Procedure Code as applicable to Ajmer Merwara (*Norman J. C*) KHAIRAT MOHAMMAD v. HIRA CHAND

1936 J 138

——O. 3, R. 4—*Appointment of Pleader—Not restricted to parties or their authorisd agents*

O 3, R 4 does not restrict the power of appointment of pleaders to parties or their authorised agents. (*Weston J. C*) GHISU LAL v SHRI KISHEN

1935 J 57

——O 3, R. 4(2)—*Pleader appointment by a gurdian ad litem of a minor—Appointment does not cease on minor's attaining majority*

A pleader duly appointed on behalf of a minor does not become *functus officio* on the minor's attaining majority. Under O 3, R 4 (2) C P C an appointment once duly made continues in force until determined with leave of the court by a writing signed by the client or pleader dies or untill the proceedings in the suit are ended as regards the client (*Jolly J. C*) BABU LAL v G. ATKINS

4 J 1

——O 3, R 4—*Vakalatnama and memorandum of appearance*

See, Notification by J C

1934 J. 1 (N S)

CIVIL PROCEDUREC ODE (1908), O 5, R 17.

——O. 5, 17—*Parties should not request Process servers to take notices addressed to them to their counsel*

See Notification by J C

1935 J 6 (N S)

——O 5, R. 17 and R 19—*Party refusing to accept service—Serving officer acting under R 17—Court bound to examine him on oath unless report verified by affidavit*

When a party refuses to take notice and the serving officer acts under O 5, R 17 the court is bound to examine him on oath unless he has verified his report by an affidavid (*Norman J.C.*) JAWAHIR SINGH v. JAWALA PERSHAD.

1936 J 195.

——O 6, R 17.

Also see, C.P C.—O 1, R. 10.

Amendment Allowed.

Amendment Refused

Case decided.

Principles

Suit not maintainable.

Amendment allowed.

——O 6, R 17—*Amendment of the plaint may be allowed to make it clear that plaintiff was suing as Karta*

When there is nothing in the plaint to suggest that a plaintiff was deliberately trying to conceal any facts from the court he may be allowed to amend the plaint so as to describe himself as Karta of the joint family. (*Norman J. C*) PHOOL CHAND v. JAGAN NATH.

1936 J. 16.

CIVIL PROCEDURE CODE (1908), O 6, R.17.

——O. 6, R. 17—*When certain members of a joint Hindu family sue, amendment may be allowed to make it clear that they sue on behalf of the joint family*

Certain members of a joint Hindu family sued in their names without any suggestion in the plaint that they were doing so on behalf of the joint firm. An application was subsequently put in to amend the plaint stating that plaintiff formed a joined family with other members and seeking to add to the heading of the plaint the words "as members and on behalf of the joint Hindu family".

Held, the amendment sought, being bona fide, is not more than a matter of form and be allowed. *33 A. 272, 35 A. 519, 34 B. 178* and *12 L. 428* **Fol.** (*Weston J. C.*) MOHAN LAL v. FIRM RADHALAL PIRBHULAL.

1935 J 11

——O 6 R. 17—*Suit wrongly filed in name of Firm—Amendment after limitation—No bar to suit:*

Where a man gives his business a name which suggests several partners it does not turn that business into a firm The name is merely an alias for the proprietor of the business. If in such a case a suit is filed under that alias and is subsequently amended after limitation by substituting the plaintiff's proper name the case is one of mis description and not substitution of parties and the suit does not become time barred *35 C. W. N. 132, 30 B L.R. 117* **List** (*Norman J.C.*) B. P. BHARGAVA v. GHISU LAL.

5 J.

CIVIL PROCEDURE CODE (1908 O 6 R 17.

——O 6 R 17—*Amendment due to unsatisfactory wording in Risk Form H—No rights accrued to defendant by limitation—Amendment allowed to enable plaintiff to base his claim upon only ground on which he can succeed*

Plaintiff originally alleged negligence and misconduct of Railway administration

Held the Railway Company should not obtain advantage from unsatisfactory wording in the Risk Form and unless the amendment would defeat a right which has accrued by limitation a plaintiff should be allowed to amend his plaint to base his claim upon what has been held to be the only ground upon which he can succeed (*Weston J C*) GANESHILAL MANNALAL v B B & C I RY CO

1935 J 38

Amendment Refused

——O 6 R 17—*Different cause of action—Suit for ejectment—Amendment cannot be allowed to convert it into suit for possession*

Suit for ejectment Defendant claimed that he was owner Defendant died His legal representatives claimed that they were in possession in their own right Plaintiff then applied to amend the plaint to sue in the alternative for possession on the basis of title

Held the proposed amendment will introduce a different cause of action The refusal to amend will not deprive the plaintiff of any right (*Weston J C*) CHAND MAL v. MOHOMMAD HUSSAIN

1935 J 100

CIVIL PROCEDURE CODE (1908) O 6 R 17

——O 6 R 17—*Suit on allegation of tenancy failing—Plaintiff not allowed to succeed on title*

Plaintiff's case was that defendant was her tenant on an agreed rent Defendant denied plaintiff title asserted his own and denied any relationship of landlord and tenant

On evidence it was held that plaintiff's title was proved and that there was no definite evidence of defendant s tenancy

Held in the suit as framed the question of title to the property could not be gone into and the plaintiff having failed on the plea of tenancy could not be allowed a decree for ejectment on the basis of title *Civil Second Appeal No 45 of 1929, 57 C 394, 1925 All 705* and *1926 Sind 98* **Foll** *25 A 256* **Not applicable** (*Weston J C*) UMRAO v MAHDEVI

1935 J 4

——O 6 R 17—*Amendment not allowed to waive default clause*

When a plaintiff has once relied on the default clause he cannot afterwards be allowed to amend his plaint so as to waive it (*Norman J C*) ABDUL GHANI v AKBER KHAN

6 J 41

——O 6 R 17—*Suit for recovery of money lent—Amendment to show that money was really earnest money—Not allowed*

A plaint laid as one for recovery of money lent cannot be allowed to be amended to show that the money was not a loan but was earnest money paid on a

CIVIL PROCEDURE CODE (1908), O 6, R 17

contract of sale which the other side had failed to perform (Norman J C) PFERU v. SRI GOVIND

*5 J 2 (III)

Case decided

——**O. 6, F. 17 and S 115**—*An order refusing amendment is a ' case decided*

A refusal to allow an amendment is a case decided within the meaing of S *115*, *1935 All 393* **Foll.** (*Weston J C.*) CHAND MAL v MOHOMMAD HUSSAIN.

1935 J 100.

Principles

——**O 6 R 17**—*Rules and principles for grant of leave*

(2) (*a*) The rule is that amendments in pleadings ought ordinarily to be allowed

(*b*) Leave to amend should be refused where

(i) the application is not made in good faith, or

(ii) the amendment would introduce a totally inconsistent case, or

(iii) the effect would be to take away from the opposite party a legal right which has accrued to him by lapse of time.

(*c*) A change in the cause of action is not necessarily a bar to an amendment of a plaint What is a bar is the substitution of an inconsistent cause action inconsistency meaning two facts which cannot exist together. (*Macklin J. C.*) MAN MAL v. GOG RAJ.

5 J. 1

CIVIL PROCEDURE CODE (1908), O 6, R 17.

——**O 6 R 17**—*When amendment to be allowed*

Whether the court should or should not grant leave to amend the plaint depends upon the stage at which the amendmend is asked for and whether the original error in the pleadings is due to mistake or inadvertence (*Norman J. C*) G GOULD v. JATAN LAL.

5 J. 100.

——**O 6, R 17**—*Amendment when allowed*

(*b*) Leave to amend will as a rule be granted to enable the *real question* in issue between the parties to be raised on the pleadings and where *no injury* can be caused to the opposite party except such as can be sufficiently compensated in costs. *1925 Oudh 291* and *1925 Mad. 585* **Not Foll.** (*Murphy J. C.*) GOPI KISHEN v. RAM PAL.

1925 S 21.

——**O. 6, R 17**—*Amendment—when refused*

(*b*) Amendment will be refused when it is not sought in good faith, or when the amendment is not essential, or would occassion irreparable loss to the other side, or when it introduces a totally new, different and inconsistent case and is made at a late stage, *1925 Oudh 291* and *1925 Mad 985* **Not Foll** (*Murphy J. C.*) GOPI KISHEN v. RAM PAL

1925 S. 21.

Suit not maintainable

——**O 6, R. 17**—*Court held suit not maintainable—No amendment*

When once a finding, that the suit is not maintainable has been recorded and remained unchallenged it cannot be set aside and consequently no leave to amend the plaint can be further granted (*Murphy J C*) S PANNA LAL v S KALYAN MAL DADHA

2 J 75

——**O 6 R 17**—*Suit not sustainable—Allow plaintiff to withdraw—Amendment cannot be allowed*

(*b*) When a suit is unsustainable as brought the proper order to pass is to allow the plaintiff to withdraw the suit with leave to bring a fresh suit and on failure to dismiss the suit The plaint cannot be ordered to be amended and proceeded with in the same suit *9 A* 191 *P C* **Foll** (*Baker J C*) S SOBHAG MAL LODHA v KISTUR CHAND

1926 S 41

——**O 7, R 1**—*Court should see substance and not form of plaint*

It is the substance rather than the form of the suit which should be considered 5 1 *M L J* 61 **Foll** (*Weston J C*) ABDUL GHAFFAR v MOHAMED SHAFI

1935 J 107

——**O 7, R 1**—*Court should see substance and not form of relief*

(1) A defect in the form of relief claimed is immaterial if the relief required has been substantially claimed in the plaint What the court has to consider in questions of maintainability is the substance rather than the form of the suit 1931 *Mal* 94 27 *A* 325 **Rel** (*Macklin J C*) CHATUR BHUJ v RAM KISHEN DAS

5 J 61

——**O 7, R. 1**—*Defendants particular status not pleaded which would make him liable—But Court bound to take judicial notice of that status—Defendant liable*

(*b*) To allow defendants to escape a liability by ommission to plead a status which is theirs, by refusing to take judicial notice of a provision of the statutory law would be an abuse of the powers of the court and a defeating of the ends of justice within the meaning of S 151 C P C (*Murphy J C*) MOTA v RAM KISHEN

1925 S 49

——**O 7, R 1 and S 20**—*Cause of action neither pleaded nor proved—Court has no jurisdiction*

Plaint gives no indication as to how the cause of action arose within the court s jurisdiction No mention as to where the price was payable No evidence led upon the point Held, as plaintiff has not attempted to show that money was payable within the court s jurisdiction and not to his agent or canvasser who made the contract at Umreth in the Bombay Presidency, the court had no jurisdiction (*Weston J C*) B P BHARGAVA v C M SHAH & CO

1934 J 103

——**O 7, R 7**—*Minor relief can be granted where major relief claimed*

Where a major relief is claimed a minor relief can, if proved, be granted A plaintiff suing on sole ownership can succeed on proof of joint ownership (*Norman J C*) BENI GOPAL v KANHIYA LAL, S

***6 J 4**

——O 7, R 7—*Scope—Plaintiff claimed the wall as her own—Court can grant decree that wall is a party wall*

The general rule is that a Court should give what relief it can

The plaintiff claimed the wall as her own *Held*, that the court can grant a decree to the effect that the wall is joint of the parties, 1930 *P.C* *38* **Foll.** (*Norman J C*) TEMPLE OF SRI RAM CHANDI AJI v NATHI.

1936 J 134

——O. 7, R 7 and S 100—*High Court can grant proper relief even though not claimed in lower courts if facts stated in plaint*

In view of O 7 R 7 C P C there is nothing to prevent the High Court in Second Appeal from granting the proper relief to a plaintiff even though it was not claimed by him in the lower courts where the facts on which such a relief can be granted are sufficiently stated in the plaint *27 N. L. R 327* and *27 A 321* **Rel** (*Macklin J. C.*) NARSINGH DAS v NARAIN DAS.

5 J. 73

——O. 7, R. 8 and S 149—*Several reliefs but not separately valued—Appellate Court will not hear Suo motu*

Where the reliefs are several and are not seperately valued it is not possible for a Court of Appeal to hear the appeal up to the value of the Court fee paid within limitation, suo motu, without an application to amend the memorandum of appeal, 1931 *Lah.* **Doubted** (*Norman J C.*) MD HASMAT ULLAH v BASTI BIBI

6 J 27.

——O 7 R 10—*Court returning a plaint for presentation to proper court—It cannot extend the original period of limitation*

A court returned the plaint for presentation to the proper court within a fortnight Plaintiff then represented the plaint in the proper court. By that date the suit had become time barred

Held, the order of the first court allowing a fortnight for representation was illegal and could not extend limitation. (*Norman J C*) HEERA LAL v KALU.

1936 J 67.

——O 7, R. 11 (c)—*Appeal not properly stamped—Court may order party to make up deficiency within limitation—If appeal filed on last day of limitation correct procedure laid down*

(4) When the appeal is not properly stamped the court may order the party to make up the deficiency within the period of limitation. But if the appeal is filed on the last day of limitation with deficient court fees the correct course is to call upon the appellant to show why the appeal should not be rejected and if an application is then made under S 149 Civil Procedure Code or Section 5 of the Limitation Act notice of it should be given to the opposite party and the point should be decided before the appeal is set down for hearing on its merits. (*Norman J. C*) B. B. & C I. Ry. v THE EDWARD MILLS CO, LTD, BEAWAR

5 J 83.

——O. 8, R. 6—*In suit for accounts Defendant entitled to amount found due to him against Plaintiff, without claiming it as a set off.*

If Plaintiff sues for accounts, he impliedly undertakes to pay to the defendant any thing that may be found due on accounts being taken and defendant need not specifically pray for a decree. Deft's claim not being a set off no question of Court Fees or Limitation arises *32 A. 525, 14 C. 147, 54 M 654,* **Foll** *46 A, 858* **Rel** (*Norman J. C.*) THIKANA KHETRI v. RATI RAM GHISA RAM & CO.

***1934 J. 99.**

——O. 8, R 6—*Equitable set off—Meaning of*

When the different demands arise out of the same transaction or are so connected in their nature and circumstances that they can be looked upon as part of one transaction there arises what is called an equitable set off and on this Court fees are not payable. (*Norman J. C*) APAJI v. NOOR MOHAMAD.

1936 J 10

——O 8, R. 6—*Legal set off—What amounts to:*

A legal set off must be for money legally recoverable from plaintiff, that is to say for it must be money for which defendant could sue plaintiff. (*Norman J. C.*) SOLEMON D'RAZARIO v. JAMES D. ROZARIO

1936 J. 60.

——O. 8, R. 9—*Counter written statement—Written statement putting forward a counter-claim—Desirable that plaintiff should file a counter written statement:*

Whenever the written statement puts forward anything in the nature of a counter claim it is advisable, though not

obligatory, that the plaintiff should file a counter written statement. (*Norman J.C*) BALU RAM v. MAGAN LAL.

***1936 J. 217.**

——O. 9, R 6 (1) (a)—*No ex-parte Proceedings—Unless proof of legal service*

Exparte orders should not be made except on proof of legal service. (*Murphy J. C*) JAI KISHEN v. GHISA LAL.

1. J 14

——O. 9, R. 7—*"Good Cause" includes non-service of summons:*

"Good Cause" in Order 9, Rule 7 will include non-service of summons. (*Norman J. C.*) BIRDHI CHAND v. NORAT MAL.

1936 J. 18.

——O. 9, R. 9—*Application for restoration on same day—Restoration should be allowed.*

A plaintiff reaching the court finds that a part of his claim has been decreed to the extent of defendant's admission. He applies on the very day for restoration. *Held*, that restoration should be allowed. (*Murphy J. C*) FIRM CHOTH MAL SUA LAL v. SHEO NATH.

3 J. 5

——O. 9, R. 9—*Restore suit if plaintiff late by a few minutes:*

(*b*) Restoration of a suit dismissed for default should not be refused if the plaintiff was late by a few minutes only in arriving on the date of hearing. *46 M. 60, 1925 Bom. 421* and *1924 Bom. 392* **Rel.** (*Shannon J. C.*) MOTI LAL v. HINDU.

3 J. 69.

CIVIL PROCEDURE CODE (1908), O 9 R 9

——**O 9, R 9**—*Suit restored on payment of costs—Costs not paid till next date—Suit dismissed as plaintiff did not comply with condition precedent—Plaintiff subsequently applied for restoration—Application is maintainable*

When an order is made subject to a condition precedent and the order lapses because that condition precedent is not fulfilled, it is open to a party to show that the non fulfillment was due to causes over which he had not control (*Norman J C*) MOHAN LAL v GIRWAR LAL

***1936 J 212**

——**O 9 R 9**—*Court restored suit contrary to O 9—Revision lies*

See—C P C—S 115

——**O 9, R 9**—*Suit dismissed for default—No sufficient cause shown to restore it—Whether S 151 has any application*

See C P C—S 151—Restoration

——**O 9 R 9**—*Ex parte Application*

See C P C—S 151—Restoration

——**O 9 R 13**—*Order setting aside ex parte decree—Cannot be challenged in appeal*

See C P C - S 105

——**O 9, R 13**—*Court set aside ex parte decree contrary to O 9—Revision lies*

See C P C - S 115.

——**O 9, R 13**—*Ex parte decree—No sufficient cause to set it aside—Whether S 151 has any application*

See, C P C—S 151—Restoration

——**O 13**—*Documents must be produced at first hearing—Endorsement*

CIVIL PROCEDURE CODE (1908), O 14 R 1.

See District Judge s Notification

2 J 59 (G S)

——**O 13, R 3**—*Rejection of document not produced from proper custody*

It is not a valid ground for rejecting a document that it was not produced from proper custody (*Norman J C*) HARI DAS v MUNICIPAL COMMITTEE AJMER

1934 J 61

——**O 13, R 4**—*Document proved but not endorsed Document to be considered*

Where a document has been produced and proved by a party it is entitled to derive its full benefit inspite of the fact that it has not been endorsed by the court as required by the provisions of Order 13, Rule 4 because it is a cardinal principle of law that the action or inaction of the court shall not harm any man (*Shannon J C*) RAM KISHEN v KASHI RAM

***5 J 3 (1).**

——**O 13 R 4**—*Documents not endorsed but relied by trial court—Appellate court may remand for compliance*

Where the trial court has relied upon documents which have not been endorsed as required by O 13, R 4 C P C the Appellate Court should not rule out of consideration such unendorsed documents but the proper course is to remand the suit for compliance with the provisions of that rule *5 L 227* and *9 L. 4* **Rel** (*Broomfield J C*) NASIR UDDIN v NOOR MOHAMAD

***5 J 5 (1)**

——**O. 14, R 1 (5)**—*Double and negative issues deprecated*

CIVIL PROCEDURE CODE (1908) O 20 R 11

——O 20 R 11—*Fixing of instalments—Judicial Act—Revision lies*

(*a*) Discretion to fix instalments is a judicial discretion and failure to exercise it in a judicial manner is a valid ground for interference in revision 7 L 395 and 11 C L J 131 Foll (*Jolly J C*) FIRM BUDHI CHAND SUGAN CHAND v MOTI LAL

4 J 76

——O 20 R 11—*No local enactment permitting instalments to agriculturists in Execution proceedings*

No local enactment appears to exist permitting instalments to be allowed in execution proceedings when the judgment debtor is an agriculturist (*Weston J C*) RAJI v CHITAR

*1935 J 42

——O 20 R 18 and O 26 R 14 (3)—*Decree is preliminary—It becomes final after hearing parties*

(*b*) A decree for partition under O 20 R 18 is only a preliminary decree A final decree is passed after consideration of the Commissioner s Report under O 26 R 14 (3) (*Broomfield J C*) ABDUL MAJID v R B S BRIDH MAL

3 J 59

——O 21, R. 2—*Adjustment—Uncerti*

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xecuting Court
AN LAL v PANNA

CIVIL PROCEDURE CODE (1908) O 21 R 15

An oral agreement as an adjustment of a decree cannot operate as a bar to an execution application. (*Shannon J C*) NOOR MOHAMED v SUKHAN RAJ

*3 J 2

——O 21 R 2—*Executory agreement—No adjustment*

Executory agreement cannot be pleaded in bar of execution 54 A 573 and 1931 Lah 608 Foll 1935 Bom 303 Not Foll 1935 A M L J 97 Ref (*Norman J C*) KALYAN MAL v RAM PAL

1936 J 157

——O. 21, R 2—*Parties can substitute fresh contract for decree—It will amount to adjustment*

It is open to parties to a decree to substitute a fresh contract for a decree and for the judgment debtor on such fresh contract having come into existence to apply for the adjustment to be recorded An agreement that at some future time on delivery of property the decree would be considered satisfied would be no adjustment (*Weston J C*) MALA v JAWANA

1935 J 97.

——O 21, R 2—*Joint decree holders—Admission of satisfaction by one does not bind others unless he received on behalf of all*

An admission of satisfaction by one Decree holder does not bind the others in the absence of evidence that he received it on behalf of others (*Norman J C*) MUHAMMED AZIZ ULLAH, v ABDULLAH

1936 J 32

. 2 , R. 15—*Joint decree holders—apply for his share*

It is not open to one of several decree holders to apply for execution in respect of his share of the decree It is not open to the court to allow execution for a share only (Norman J C) MUHAMMED AZIZ ULLAH v ABDULLAH

1936 J 32

—O 21 R 15—*Application for execution must state that it is filed on behalf of all—Omission is fatal*

Ommission to state in the execution application that it is filed on behalf of all joint decree holders is a fatal defect (*Norman J C*) MUHAMMED AZIZ ULLAH v ABDULLAH

1936 J 32

—O 21 R 16—*Decree assigned—No separate application for notice to assign or necessary*

No separate application for notice to the assignor is necessary The request may be made in the execution application (*Norman J C*) GULAB CHAND v RAM NIWAS

1936 J 79

—O 21, R 19—*Redemption decree—Execution for defendant s costs—Limitation—Commencement of*

(*a*) In a redemption decree where costs of the suit have been awarded to the defendant, execution cannot be had by him under O 21, R 19 so long as a larger sum is payable by him under the decree to the plaintiff

(*b*) The defendant being entitled to a set off only for costs limitation for execution of his decree for costs would commence from the date of payment of

the redemption money to the plaintiff *23 M 121* **Foll** (*Jolly J C*) SETH SOBHAG MAL v P RAM CHANDRA

***4 J 5**

—O 21 R 50 (2)—*Scope of*

The word is disputed must be taken to mean is not admitted (*Norman J C*) SOBHA RAM SRI RAM v PRABHU LAL

1934 J 54

—O 21, R 50 (2) and (3)—*Ex parte order passed by one Court cannot be questioned by another court*

Sub Judge Moradabad passed a decree in favour of appellant against a firm Subsequently he granted leave ex parte to execute the decree against respondents on the ground that they were partners Appellants sought to execute against Respondents at Ajmer Respondents denied at Ajmer that they were partners

Held the respondents could not re open the question which had been decided by the Moradabad Court

Courts of concurrent jurisdiction cannot question each other s procedure When an order under O 21 R 50 (2) is passed ex parte by one Court there is a presumption that it was passed after legal enquiry 1929 *All 590* **Dist** (*Norman J C*) F SOBHA RAM SRI RAM v PRABHU LAL

1934 J 54

—O 21 R 58

Also see Transfer of Property Act —S 53

—O 21, R 58 and R 63—*Objections dismissed—Suit by ostensible owner—Burden of proof on Decree holder to show that transfer was fraudulent*

——O. 20, R 11—*Fixing of instalments—Judicial Act—Revision lies*

(*a*) Discretion to fix instalments is a judicial discretion and failure to exercise it in a judicial manner is a valid ground for interference in revision *7 L 395 and 11 C L J 431* **Foll** (*Jolly J C*) FIRM BRDHI CHAND SUGAN CHAND v MOTI LAL

4 J 76

——O 20, R 11—*No local enactment permitting instalments to agriculturists in Execution proceedings*

No local enactment appears to exist permitting instalments to be allowed in execution proceedings when the judgment debtor is an agriculturist (*Weston J C*) RAJI v CHITAR

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——O 20, R 18 and O 26, R 14 (3)—*Decree is preliminary—It becomes final after hearing parties*

(*b*) A decree for partition under O 20 R 18 is only a preliminary decree A final decree is passed after consideration of the Commissioner s Report under O 26 R 14 (3) (*Broomfield J C*) ABDUL MAJID v R B S BRIDH MAL

3 J 59

——O 21, R 2—*Adjustment—Uncertified—Cannot be recognised*

An uncertified adjustment cannot be recognised by the Executing Court (*Weston J C*) CHHAGAN LAL v PANNA LAL.

1935 J 84

——O, 21, R. 2—*Oral agreement—No bar to execution application*

An oral agreement as an adjustment of a decree cannot operate as a bar to an execution application (*Shannon J C*) NOOR MOHAMED v SUKHAN RAJ

***3 J 2**

——O. 21 R 2—*Executory agreement—No adjustment*

Executory agreement cannot be pleaded in bar of execution, *54 A 573* and *1931 Lah 608* **Foll** *1935 Bom 303* **Not Foll** 1935 *A M L J 97* **Ref** (*Norman J C*) KALYAN MAL v RAM PAL

1936 J 157

——O. 21, R 2—*Parties can substitute fresh contract for decree—It will amount to adjustment*

It is open to parties to a decree to substitute a fresh contract for a decree and for the judgment debtor on such fresh contract having come into existence to apply for the adjustment to be recorded An agreement that at some future time on delivery of property the decree would be considered satisfied would be no adjustment (*Weston J C*) MALA v JAWANA

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——O 21, R 2—*Joint decree holders—Admission of satisfaction by one does not bind others unless he received on behalf of all*

An admission of satisfaction by one Decree holder does not bind the others in the absence of evidence that he received it on behalf of others (*Norman J C*) MUHAMMED AZIZ ULLAH, v ABDULLAH

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1936 J 32

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Ommission to state in the execution application that it is filed on behalf of all joint decree holders is a fatal defect (*Norman J C*) MUHAMMED AZIZ ULLAH v ABDULLAH.

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(*b*) The defendant being entitled to a set off only for costs, limitation for execution of his decree for costs would commence from the date of payment of

the redemption money to the plaintiff, *23 M* 121 **Foll** (*Jolly J. C*) SETH SOBHAG MAL v P RAM CHANDRA

***4 J 5**

—O 21, R 50 (2)—*Scope of*

The word 'is disputed must be taken to mean 'is not admitted' (*Norman J C.*) SOBHA RAM SRI RAM v PRABHU LAL

1934 J 54

— O 21, R. 50 (2) and (3)—*Ex parte order passed by one Court cannot be questioned by another court*

Sub Judge, Moradabad, passed a decree in favour of appellant against a firm Subsequently he granted leave, ex parte, to execute the decree against respondents on the ground that they were partners Appellants sought to execute against Respondents at Ajmer. Respondents denied, at Ajmer, that they were partners

Held, the respondents could not re open the question which had been decided by the Moradabad Court

Courts of concurrent jurisdiction cannot question each other's procedure. When an order under O 21, R 50 (2) is passed, ex parte, by one Court there is a presumption that it was passed after legal enquiry, 1929 *All. 390* **Dist.** (*Norman J C*) F. SOBHA RAM SRI RAM v. PRABHU LAL.

1934 J. 54

—O. 21, R. 58

Also see, 'Transfer of Property Act —S 53'.

—O 21, R 58 and R. 63—*Objections dismissed—Suit by ostensible owner—Burden of proof on Decree holder to show that transfer was fraudulent :*

CIVIL PROCEDURE CODE (1908 O 21, R 63

When the ostensible owner whose objection is overruled by the executing Court files a suit under Order 21 R 63 it is for the opposite party to show that the transfer was a fraudulent one *8 P 890 1927 P C 237* and *55 A 266* **Foll** (*Norman J C*) MOHAN LAL v GIRWAR LAL

***1936 J 212**

——O 21, R 63—*Scope—No absolute distinction between a suit under O 21 R 63 and one under Transfer of Property Act S 53*

There is no absolute distinction between a suit brought under O 21 R 63 of C P C and a suit under S 53 of the Transfer of Property Act If a decree holder whose attachment has been removed as the result of an objection preferred under O 21 R 58 files a suit against the objector on the allegation that the objector s title is based on a transfer which is voidable under S 53 then the suit falls under both O 21, R 63 and S 53 (*Norman J C*) AMOLAK CHAND v RAM NATH RAM NARAIN

1936 J 104

——O 21 R 65—*Sale not completed—Nazir not entitled to remuneration*

(*b*) The rules do not provide for payment of any remuneration to the Nazir when the sale has not been completed (*Murphy J C*) BEHARI LAL v THE DISTRICT NAZIR

3 J 51

——O 21, R 66—*Sale proclamation—Contents—Future interest and costs to be included—Sums not so included cannot be claimed subsequently*

CIVIL PROCEDURE CODE (1908) O 21, R 66.

The sale proclamation shall specify as fairly and accurately as possible the amount for the recovery of which the sale is ordered which should include all sums for future interest and costs incurred and due up to that date Any such sum not included in the sale proclamation cannot be claimed thereafter in that *Darkhast* except costs incurred and allowed subsequent to the sale proclamation (*Norman J C*) POOSA MAL v HANGAM KOER

***6 J 5.**

——O 21, R. 66—*Court sale need not continue for seven days*

(*a*) The Civil Procedure Code does not lay down that a court sale should continue for 7 days (*Murphy J C*) BEHARI LAL v THE DISTRICT NAZIR

3 J 51.

——O 21, R 66—*Appeal—Order overruling an objection that only part of the property should be sold is appealable*

An order overruling an objection that only part of the property should be sold is not an interlocutory one but is appealable (*Norman J C*) GAJJI DASS v SURAJ MAL

1936 J. 13

——O 21, R 66 (2)—*Time of sale means the time at which sale begins*

The time of the sale which is required to be set out by Rule 66 (2) obviously means the time at which the sale begins The bidding ought not to start until the advertised time (*Norman J C*) GAJJI DASS v SURAJ MAL

1936 J. 13

——O 21, R 66 (e)—*Sale proclamation—Reference to a third party s claim on the property is not material irregularity—similarly omission to refer to a possibility of litigation is not a material irregularity*

A reference in a proclamation to a third party s claim on the property is not a material irregularity Similarly omission to refer to a possibility of litigation is not a material irregularity *55 M 205* **Foll** *41 M 985* **Not Foll** (*Norman J C*) CHUNNI LAL v R B S BIRADH MAL LODHA
1936 J 169

——O 21 R 67—*Stay of court sale—Should be conditional on deposit of Nazir s commission*

(*a*) A stay of a Court sale should be granted conditional on deposit of Nazir s commission in court. (*Murphy J C*) BEHARI LAL v THE DISTRICT NAZIR
3 J 51

——O 21, R 90—*Auction Purchaser can apply to set aside sale*

In suitable case an auction purchaser can apply to set aside the sale *17 A 479* **Foll** *3 P L J 516 9 R 621* and *14 L 1* **Not Foll** *36 C 323* **Ref** (*Norman J C*) CHUNNI LAL v R B S BIRDAH MAL LODHA
1936 J 169

——O 21, R 90—*No final decree—Yet sale after notice—Sale not necessarily void—No Revision*

(*a*) The absence of a final decree for sale will not necessarily vitiate the proceedings of the court in execution leading to the sale of the property if an order for sale s passed on a notice to the Judgment debtor *28 C 73 5 B L R* and *24 M 695* **Foll**

(*b*) In such a case it cannot be maintained in Revision that the executing court acted without jurisdiction in ordering the sale

(*c*) It cannot be held that a court acted irregularly in not taking into consideration an objection which was never put forward before it (*Jolly J C*) NARAIN DAS v MISRI MAL
4 J 58

——O 21 R 90—*Non mention of value of property is not material irregularity*

(*d*) Under O 21, R 90 C P C. the only ground for setting aside a sale is some material irregularity or fraud in publishing it Non mention of the valuation of the property in the sale proclamation is not a material irregularity (*Jolly J C*) NARAIN DAS v MISRI LAL
4 J 58

——O 21 R 90—*Auction sale on Sunday—Sale not invalid*

An execution sale is not rendered invalid simply because the Nazir held it on Sunday (*Murphy J C*) MOTI LAL v MESSRS MITSUI BHUSSAIN KAISHA LTD
2 J 83.

——O 21, R 96—*Delivery of possession of equity of redemption of usufructuary mortgage*

In so far as there can be possession at all of the equity of redemption of usu fructuary mortgage that possession must follow title But if title changed when the sale certificate was issued it cannot be said that the original mortgagor remained in possession of any sort (*Norman J C*) DEEP CHAND v GHEWAR CHAND

1936 J 136

——O 21, R 103—*Suit under—Possession claimed—Court fees Rs 10/*

When possession is claimed in a suit under O 21, R 103, C P C which is based upon title the proper court fee pay able is Rs 10/ *5 A M L J 61* **Foll** (*Norman J C*) CHAIBRI BAI v NOOR MOHAMMED

6 J 46

——O 21, R 103—*Any suit brought to get rid of an order under R 101, what ever its form, must be brought with in one year*

(2) The effect of Rule 103 of Order 21 Civil Procedure Code read with Article 11 A of the Limitation Act is that an order passed under Rule 101 can be set aside only by a suit brought within one year Any suit brought to get rid of the effect of an order under R 101, whatever its form whether for declaration or eject ment based upon superior title, must be brought under *R 103*, *53 B 668* **Foll** *1926 Cal 377*, **Dist** (*Macklin J C*) CHATUR BHUJ v RAM KISHEN DAS

5 J 61

——O 22, R 2—*Suit for redemption—Death of one of the plaintiffs—No abate ment*

(2) In a suit for redemption (as the surviving plaintiff can redeem the whole mortgage by virtue of section 91 of the Transfer of Property Act) there can be no question of abatement of the suit on the death of one of the plaintiffs (*Broomfield J C*) GHISA LAL v SUJAN MAL

5 J 21

——O 22 R 3—*Abatement as a whole—It is in the nature of dismissal—Appeal lies*

(1) The Civil Procedure Code does not contain any specific provision for the abatement of a suit or an appeal as a whole when the right to sue or appeal does not survive Such an abatement is really in the nature of a dismissal of the suit or appeal as incompetent and amounts to decree Consequently an appeal lies from such an order, *17 A 172* and *20 A L J 214* **Ref** *1 L 582* **Foll** (*Jolly J C*) KAJORI MAL v. BEHARI LAL

4 J 77

——O 22 R 3—*Representative suit—Appeal abated against one appellant—Whole appeal does not abate—Test whether appeal can be proceeded in absence of legal representative of deceased*

An order that a suit or an appeal abates as a whole is not an order falling directly under *O 22 R 3* but it is of the nature of an order of dismissal as incompetent because it is not possible for the court in the absence of certain parties to proceed with it It is to be seen

whether it was not possible to proceed with the appeal in the absence of the legal representative of the deceased defendant If the grounds of appeal were common to all appellants the appellate Court could under O 41, R 4 C P C vary the decree in favour of the deceased even if he had not appealed Hence no total abatement *4 A. W L J 77* **Foll** *(Weston J.C)* ABDUL AZIZ v AMIR ALI **1935 J 102**

——**O 22, R. 3**—*Total or Partial abatement—Test whether effective decree can be passed against remaining defendants*

The only criterion is whether an effective decree can be passed against the surviving respondents *(Jolly J. C)* S AMAR CHAND v DAN MAL ***3 J 8**

——**O. 22, R. 3 (2) and (4)**—*Total abatement—Where decree would be infructuous—Representative suit—Party dies—Legal representative not brought on record—Total abatement*

The decree which would be infructuous in the absence of the legal representatives of some of the deceased parties cannot be passed.

Though in a suit of representative character it is not necessary to make all the persons interested parties, yet where some persons were made parties their presence becomes necessary on appeal. If any such person dies and his legal representative is not brought on record the suit abates in toto *1926 L 31, 429, 216 and 234 and 53 I. C 518* **Foll** *(Murphy J.C)* P. SAWATRI PERSHAD v P MAHABIR PERSHAD **2. J. 55.**

——**O 22, R 4**—*Total abatement if withdrawal or partial abatement will result in two inconsistant decree*

An appeal which had abated or was withdrawn as against one Respondent will become incompetent as against the other Respondent if the Applicants success will result in two inconsistant decrees. *(Norman J. C)* MOHAMMED BUX v HAZARAT NOOR KHAN. **1936 J 19**

——**O 22, R. 4 (3)**—*Legal representative already on record—No application necessary*

When a legal representative of a deceased party is already on the record no application to join him as such is legally required *51 M 347, 2 R 445, 1933 Lah. 765 (a)* **Foll** *10 P. 341* **Not followed.** *(Norman J C.)* FATEH CHAND v. RAMAN. **1934 J 15**

——**O 22, R 5**—*Inter-meddler and Reversioner—Both to be joined:*

Both, an inter-meddler of the deceased's property and a reversioner, are to be counted as legal representatives. *(Baker J C)* MADAN LAL v. GOKAL CHAND. **2 J 16.**

——**O. 22, R 6**—*No abatement between Preliminary and Final decree*

(c) In cases where there is both a preliminary and a final decree the judgment within the meaning of order 22, R. 6 is the preliminary decree Consequently no question of abatement arises if a party dies after passing of the preliminary decree *1927 Oudh 156* **Rel.** *(Broomfield J. C.)* ABDUL MAJID v. R. B. S. BIRDH MAL. **3 J. 59.**

——O 22, R. 9—*Order setting aside abatement—Cannot be challanged in Appeal*:

See, 'C P. C —S. 105'

——O 22, R 9—*Suit abated—But representatives brought on record—Abatement set aside—Question cannot be agitated in appeal*

Even where the suit had abated the affect of bringing fresh representatives on the record would be to set aside the abatement and the question cannot then be agitated in appeal (*Jolly J C*) BAGICHI DALLALAN v. HIRA DAS

***3 J 8**

——O 22, R. 12—*Provisions do not apply to execution*·

(*a*) Provisions as to abatement do not apply to execution proceedings (*Broomfield J C.*) ABDUL MAJID v R. B S. BIRDHI MAL

3 J 59

——O 23, R 1—*Suit not sustainable—Allow plaintiff to withdraw*

(*b*) When a suit is unsustainable as brought the proper order to pass is to allow the plaintiff to withdraw the suit with leave to bring a fresh suit, and on failure to dismiss the suit. The plaint cannot be ordered to be amended and proceeded with in the same suit. *9 All 191 P. C.* Foll. (*Baker J C*) SOBHAG MAL v. KISTUR CHAND

1926 S. 41

——O. 23, R. 1 and S 11—*Partition—Withdrawal of suit no bar to fresh suit*:

A partition suit withdrawn under O. 23, R. 1, without any determination of question in issue, even without permission to file a fresh suit, does not bar a fresh suit on the recurring cause of action, *46 A. 820*, and *28 A. 627* **Foll.** (*Weston J. C*) FATMA v. FAKHRUDDIN.

1934 J 118.

——O 23, R. 3—*Party cannot be added*

A party to the suit cannot be added by a compromise. (*Norman J. C.*) WALI MOHAMMED v. WALI MOHAMMED AND ISMAIL.

1934 J. 29.

——O. 23, R. 3—*Contents of decree—Whole of compromise should be recorded but operative part cannot go beyond matters in suit*.

Although the whole of the compromise should be set out either in a compromise decree or in an annexure thereto, the operative portion of a decree cannot go beyond matter in suit. (*Norman J. C.*) WALI MOHAMMED v. WALI MOHAMMED AND ISMAIL.

1934 J. 29.

——O 23, R. 3—*Award on an arbitration without order of court—Decree cannot be passed in terms of award under S 11 but a decree may be passed under O. 23, R. 3*

Where in a suit parties have referred their differences to arbitration without an order of the court and an award is made, a decree cannot be passed by the court in terms of the award under the provisions relating to arbitration.

In such a case however the transaction may be regarded as a compromise or an adjustment and a decree may be passed in terms of it under O 23 R 3 C P C *51 B. 908* **Foll** *47 A 637* **Diss** (*Wilkin J C*) SHEO NARAIN v HUKMA

5 J 56

——O 23 R 3—*Compromise after appeal filed—Appellate court alone can enquire*

(*e*) Where a suit has gone up in appeal any compromise or adjustment of it under O 23, R 3 C P C can be enquired into by the appellate court alone and not by the trial court *21 I C 639* **Dist** *9 Mad 103* **Reli.** (*Baker J C*) FIRM LAL CHAND BADRI NARAIN v FIRM HIRA LAL JAGAN NATH.

1926 S 19

——O. 26, R 14 (3) and O. 20, R 18—*Decree is preliminary—It becomes final after hearing parties*

(*b*) A decree for partition under O 20 R. 18 is only a preliminary decree A final decree is passed after consideration of the Commissioner s Report under O 26, R. 14 (3) (*Broomfield J C*) ABDUL MAJID v. R B ... BIRDH MAL.

3 J 59

——O 33, R 1—*Suit instituted on payme t of court fees—Court holds court fees inadequate and directs payment of additional court fees—Plaintiff unable to pay by reason of poverty—He can apply to continue the suit in forma pauperis*

A plaintiff is entitled to seek leave to continue in forma pauperis a suit already filed by him when by reason of poverty he is unable to comply with an order

directing additional court fees to be paid, *60 C 827*, and *53 M 4..*, **Foll** (*Weston J C*) MAULA BUX v SOBHAG MAL.

1934 J 105.

——O 33 R 4—*Enquiry only by the court in which suit instituted*

Order 33 requires that the inquiry it contemplates should be carried out by the court in which the suit is filed. (*Murphy J. C*) MST. UMARO v. MST MARIUM BIBI

1 J. 9.

——O 33, R. 5—*Grounds of rejecting application*

The grounds upon which an application to continue a suit in forma pauperis can be rejected are those given in O 33, R. 5 so far as they are applicable (*Weston J. C*) MAULA BUX v. SOBHAG MAL.

1934 J. 105.

——O 34, R. 2 and R. 4 and S. 34—*Mortgage suit—S 34 has no application O 34, RR 2 and 4 apply—Interest at stipulated rate be allowed up to date fixed for payment*

S 34 of C P C. does not apply to mortgage suits These are governed by O. 34, R 2 and R. 4. And the consequence is that interest must be allowed on the principal to the date of the suit at the rate provided in the mortgage, and also at the same rate from the date of the suit up to the date fixed by the court for payment of the mortgage debt, and that in a decree for sale it may be allowed on the aggregate of principal, interest and cost from the date fixed for payment to

CIVIL PROCEDURE CODE (1903), O 38, R 5.

date of realization at a reasonable rate (*Murphy J C*) KALYAN MAL v. SHEO DAS

3 J 17

---O. 38 R. 5- *If section 135 of the Contract Act not applicable to a bond given to Court the equitable principles on which the section is based aptly*

If Section 135 of the Contract Act does not apply to a bond given to the Court the equitable principles on which that section is founded do apply, and a discharge can be given to the surety 1930 *Bom. 122*, 1930 *Lah 896* and *56 Mad 623* **Foll.** (*Norman J C*) NATH MAL v. ABDUL HAMID

1936 J 1

---O 38, R 5---*Court materially altering the terms---Surety is discharged*

If the Court by its action materially affect the terms of the surety bond, without the assent of the surety, the latter is discharged, 1935 *Nagpur 258* **Approved** (*Norman J C*) NATH MAL v. ABDUL HAMID.

1936 J 1.

---O 39, R. 1---*Refusal to grant ad interim injunction---No Revision.*

When a Court refuses to make an order under O. 39, R. 1 C. P. C. it is not a refusal of jurisdiction but an exercise of it and is not revisable. (*Murphy J. C.*) SHAMLAT COMMITTEE OF PUSHKAR v. PERSHOTAM.

1925 S 9.

O. 39, R. 1. and R. 2 and S. 141---*No appeal against order refusing to issue ad int ' 'unction*;

CIVIL PRO EDURE CODE (1908), O 41, R 1.

Application under Section 12 of the Guardian and Wards Act to restrain marriage on the ground that the bride groom was under 18 years of age Court rejected the application. *Held*, No appeal lies. (*Norman J. C*) MR. MAHENDRA LAL v. MANGI LAL

1936 J 182

---O. 39, R 7 (1) (a)---*Court can order that situation should not be altered*:

Order directing that the situation should not be altered pending disposal of the suit was an order which the court was competent to pass. (*Weston J C.*) BISHEN LAL v. SRI NARAIN.

1935 J 117.

---O, 40, R. 1---*Receiver may be appointed on consideration of allegations of waste and of prima facie merits of case*:

A receiver may be appointed when it appears just and convenient, and for it to be just some consideration not only of allegation of waste made against the person in possession but also of the prima facie merits of the case of the plaintiff in the suit is essential. (*Weston J. C*) MADAN LAL v. NARAIN.

1935 J. 61.

---O. 41, R. 1---*Memorandum of appeal must give address of Parties*:

See, Notification by J. C.

1936 J 1 (N.S)

---O. 41, R. 1---*Memorandum of appeal must explain how valuation has been arrived at*:

See, Notification by J. C
1936 J 1. (N S)

——O 41, R 1—*Memorandum—Must set forth all points*

The object of the memorandum of appeal is that respondents as well as court shall have notice of the points that are to be argued. Any point which is to be argued must therefore be stated precisely and this is particularly so when it is a new point which has not been taken in the courts below. (*Norman J C*) THAKUR S VISHWA KARMAJI v KANHIA LAL, SETH

***1936 J 210**

——O 41, R. 1—*Execution Appeal—Not necessary to file formal decree*

An order in an execution application is in itself a decree within the meaning of S 2 (2) of the C. P C and consequently it is not necessary to file a copy of a formal decree, even if drawn up, with the Memo of appeal (*Norman J. C*) MST GOPI v. JUGAL KISHORE

***5 J 3 (III)**

——O 41, R 2—*Suit by two co parceners—One co parcener dies after decree Remaining co-parcener files appeal—Appeal competent*

All co parceners are necessary parties in a suit on behalf of a joint family. But in an appeal from such a suit where the decree proceeds on grounds common to all, the death of one of the co plaintiffs, whose legal representatives have not been brought on record, does not make the appeal abate as a whole because the appellate court has under Order 41,

Rule 4 C P C power to vary the decree in favour of even non appealing plaintiffs *27 B 284, 25 A 27* **Foll** *1927 Pat.* **Diss** (*Jolly J C*) KAJORI MAL v. BEHARI LAL

4 J 77.

——O 41, R 5—*Stay of execution by Appellate Court on furnishing security-Acceptance by lower court of surety bond beyond time is without jurisdiction—But surety is liable*

(2) Where the execution of a decree has been stayed by the appellate court on the judgment debtors furnishing security for the decretal amount within a specified period, the executing court acts without jurisdiction if it accepts the security beyond the time so specified. But this does not affect the liability of the surety to the decree holder under the bond which has been accepted and on which execution of the decree has been stayed even though the executing court had no authority to accept it (*Maclin J. C.*) R. S NATHU SINGH v ADAM

5 J. 69

——O 41, R 11 and S 115—*Parties not heard in Revision—No ground for Review*

An omission to hear the parties in a revision application is not a good ground for a review (*Murphy J C.*) FIRM ACHAL DAS BAL CHAND v. FIRM KUNDAN MAL UDAI MAL

1 J 6.

——O 41, R 18—*Process fee to be punctually paid—Otherwise dismissal*

CIVIL PROCEDURE CODE (1908), O 41, R.19

See, notification by J. C.

1934 J 6 (N.S)

——O 41, R 19 and S 151—*Rule exhaustive—But where appellant has no notice, S. 151 applicable*

When an appeal is dismissed for default the proper remedy for its restoration is an application under O 41, R 19 and not S 151 But when the appellant had no notice of the hearing he can have resort to S. 151 because O 41, R 19 read with article 108 of the Limitation Act pre supposes the proper service of summons on the appellant *45 B 618* and *11 R 26* **Foll** *(Norman J. C)* MATHRA DAS v. KALYAN MAL

***6 J 7**

——O. 41, R 22—*Appellate Court cannot modify decree to appellant s detriment in absence of cross objections*

Suit to set aside a decree on the ground that it was obtained by fraud Trial Court held that the fraud alleged was not actionable and rejected the plaint under O. 7, R. 11 (a) C. P C. Plaintiff appealed Lowe appellate Court, while agreeing with the trial Court's finding that the fraud alleged was not actionable, held tnat the suit should have been dismis ed and amended the trial Court's decree to that extent. *Held*, the Lower appellate Court should not modify the trial Court's order to the detriment of the appellant in the absence of cross objections (*Norman J. C*) RAM BILAS v. RAMDEV PHUL CHAND.

***1934 J 50**

——O. 41, R. 22—*No Cross-objections-No modification of decree to appellant's disadvantage*

CIVIL PROCEDURE CODE (1908), O.41, R 22.

The trial court passed a decree against four defendants Only defendant No 1 appealed. Lower appellate court held that Defendant No 1 alone was liable.

Held, the effect of freeing defendants Nos 2, 4 from liability is to increase the liability of defendant No. 1 as he will not be able to ask for contribution. As defendant No. 1 alone preferred an appeal, it was not open to lower appellate court to modify the decree to his disadvantage. *(Norman J. C)* MIR SARFARAZ ALI v. SYED MUZAFFAR HUSSAIN.

1934 J 37.

——O. 41, R. 22 and S. 100—*Varying order of costs of trial Court in absence of appeal or Cross objections is wrong.*

Trial Court orders each party to bear its own costs The lower appelate Court's order is, 'I dismiss the appeal with costs in both courts'.

Held, this is a slip If an appeal is dismissed the order of the Court below, including its order for costs, stands. That order can only be set aside on appeal or cross-objection *(Norman J. C)* GHISI RAM v BADULLA.

***1934 J 26.**

——O. 41, R 22 and S 100—*Respondent cannot re open findings of fact:*

(1) A respondent in a Second appeal cannot re-open issues of fact decided against him by way of filing cross-objections *(Jolly J. C)* KAN MAL v. ASA NAND.

4 J. 84.

——O 41, R 23—*Preliminary point—Meaning of*

(*d*) The expression 'preliminary point is not confined to such legal point only as may be pleaded in bar of a suit but comprehends all points or issues whether of fact or of law the determination of which has precluded the necessity for determining other points or issues and such other points or issues have therefore been left undetermined *9 All 26 10 All 289* and *16 Mad 207* **Foll** (*Baker J C*) S SOBHAG MAL LODHA v KISTUR CHAND

1926 S 41

——O 41, R 23—*Preliminary point Definition*

Any point whether of fact or law the decision of which avoids the necessity for a full hearing at a suit is a preliminary point (*Murphy J C*) D B SETH UMED MAL v BHAGWATI PERSHAD

2 J 62.

——O 41, R 23, S 151 and O 17, R 3—*Case not dismissed on merits—it amounts to decision under O 41 R 23 and not S. 151 or O 17 R 3*

(c) When a case is not dismissed on merits the order is not under O 17 R 3 (33 All 690 relied upon) but the order in such cases amounts to a decision on a preliminary point within the meaning of O 41 R 23 C P C and a second appeal lies It cannot be said to be an order under S 151 C P C (*Baker J C*) S SOBHAG MAL LODHA v KISTUR CHAND

1926 S 41

——O 41, R 24—*Evidence must be sufficient*

The Appellate Court may finally determine the suit after re settling the issues, under O 41, R 24 C P C when the evidence upon the record is sufficent to enable it to pronounce judgment This means that the evidence should be sufficient to enable it to pronounce a satisfactory judgment fair to all parties (*Broomfield J C*) NASIRUDDIN v NOOR MOHAMAD

5 J 5 (I)

——O 41, R 25—*Issue remitted—Trial Court bound to return a finding*

When an issue is sent down it is the duty of the trial court to return a finding on it whether it considers the issue material or not (*Norman J C*) GIRDHARI v DARGAH KHWAJA SAHIB

1936 J 128

——O 41, R 27—*Fresh evidence cannot be put in upon the ground of recent discovery*

The rule does not permit fresh evidence to be put in upon the ground of recent discovery *8 I A 221* **Foll** *2 P 670* **Ref** (*Norman J C*) SHEO RATAN v PURAN CHAND

***1936 J 216**

——O 41 R 27—*Additional evidence can be accepted for substantial cause—Lacuna not necessary*

Appellate court has jurisdiction to accept additional evidence for any substantial cause not only when it has discovered *lacuna* and requires additional evidence *74 I C 747* **Foll** *31 B 381* **Ref** (*Bartee J C*) ABDUL RAHMAN v MST SADDI.

2 J 27.

——O 43 R 1 (k) and S 104—*Abatement set aside—No second appeal*

No second appeal lies against an order passed on an application made under O 22 R 9 C P C (*Murphy J C*) SUNDER LAL v MST SUGNI

3 J 19

——O 45, R 7—*Appellant fails to deposit security within time—High Court can extend time or cancel leave*

The rule is governed by Rule 9 of the Privy Council Rules Under that Rule on failure of the appellant to furnish security the Court has discretion either to cancel the leave or to make such further or other orders as the justice of the case requires

Where the appellant is misled by a clerical mistake in the order of the Court and files security after the time allowed the justice of the case does not require that the leave should be revoked 44 *A* 216 and 26 *A L J* 433 **Diss** 51 *Bom* 403 **Foll** (*Jolly J C*) MANMOHAN MAL v R B S BIRADH MAL

5 J 11

——O 47, R 1

Also see Decree—Ambiguous conditional

Error on face of record

Other sufficient Cause

Review lies

Review does not lie

Error on face of record

——O 47, R 1—*Error on face of record What is*

(*b*) If a court has to go deeply into the whole record and law bearing on the case it is not an error on the face of the record (*Shannon J C*) MODU LAL v MOHAN LAL.

4 J. 7

Other sufficient cause.

——O 47 R 1—*"Other sufficient cause"—Construed in the light of previous words*

(*a*) The words other sufficient cause in O 47 R 1 are to be construed in the light of the previous words and on the principle of the rule of 'ejusdem generis 1922 *P C* 112 **Foll.** (*Murphy J C*) GANESH DAS v INDAR BHAN.

1925 S 1

Review lies

——O 47, R 1—*Revision dismissed as belated—Court overlooked reason of delay—Review lies*

(*b*) An order rejecting an application for revision on the ground that it is belated is an exercise of judicial discretion, which is not ordinarily revised but when the delay was due to the applicant s having moved the lower Appellate Court for amendment of the decree and this fact was overlooked by the Revising Court it would amount to sufficient cause within the meaning of O 47, R 1 C P C (*Murphy J C*) FIRM SOORAT RAM POONAM CHAND v FIRM JHUNTA LAL KALYAN MAL.

1925 S 2

——O 47, R 1—*Decree ambiguous—Review—Proper remedy*

CIVIL PROCEDURE CODE (1908 , O 47, R.1.

When the meaning of the decree is doubtful, review is proper remedy (*Norman J. C.*) MOHAN LAL v. KHEM CHAND.

1934 J 30.

——O 47, R 1—*Conditional decree becoming final—Trial court cannot extend time—Review is proper remedy*

When a conditional decree becomes final on the failure of the judgment debtor to comply with its terms, it is incapable of being varied by the original court except by means of a review, 35 *A.* 582 **Rel** (*Murphy J. C.*) MST. NATHI v. JAGRUP.

1927 S. 22.

Review does not lie.

——O. 47, R 1—*Point not raised at hearing cannot be raised in Review*

The general rule is that a court will not allow a review on a point not raised at the hearing of the case, *C R.* 201 *of* 1932 **Foll.** (*Norman J. C.*) B B & C. I Ry. Co v. EDWARD MILLS CO. LTD., BEAWAR.

6 J. 53.

——O. 47, R. 1—*No ground that another judge would take different view—Or if fresh opportunity is given court might come to different conclusion*

(*a*) *It is no ground for review* that another Judge might take a different view of the law, not that if another opportunity were given the court might be persuaded to come to another conclusion (*Shannon J. C*) MODU LAL v. MOHAN LAL.

4 J 7.

——O. 47, R. 1—*No review on ground that previous order wrong*

CIVIL PROCEDURE CODE (1908), O 47, R 1.

It is not a sufficient reasons for granting a Review that if another opportunity was given to the applicant he would satisfy the court that the previous order was wrong 37 *All* 440 **Rel** (*Baker J. C*) GOPI NATH v. THE BRAHMANS OF BADI BASTI PUSHAKAR.

1926 S. 28.

——O 47, R 1—*Default in appearing under* **O.** *9, R 8 C P.* **C.**—*Suit dismissed—No Review.*

(*b*) Default in putting in an appearance under O 9, R 8, is in no sense analogous to these sufficient causes and no review against an order dismissing suit or application in default lies 1924 *Cal.* 774 **Rel.** (*Murphy J C.*) GANESH DAS v. INDER BHAN

1925 S. 1.

——O. 47, R. 1 and S. 151—*New authority—No ground for Review*

(*b*) The discovery of a new authority is no ground for a Review.

(*c*) An order which cannot be reviewed on the ground of wrong exposition of law cannot also be reviewed under S 151 C P C A Court cannot alter its order under S 151 because it subsequently changes its mind (*Baker J C*) FIRM LAL CHAND BADRI NARIN v. FIRM HIRA LAL JAGAN NATH

1926 S 19

——O 47, R 1 and S 115 and O 41, R 11—*Parties not heard in Revision—No ground for Review*

An omission to hear the parties in an Revision application is not a good ground for a Review (*Murphy J C.*) FIRM ACHAL

DAS BAL CHAND v F KUNDAN MAL UDAI MAL

1 J 6

——O 48 R 3—*Formal order must be clear—Decrees must conform to Appendix D*

See Notification by J C

2 J 53 (G S)

——Sch II, Para 1—*Party interested—Reference without consent of a party against whom ex parte order was passed illegal—Award and decree on such reference are absolutely void*

A party although an ex parte order had been passed against him was a party interested within the meaning of *Sch II, Para* 1, 52 *C* 85 26 *M* 47 and 47 *C* 555 **Referred** (*Weston J C*) DEO KARAN v SUGAN CHAND

1935 J 89.

——Sch II, Para 1—*Arbitration—Reference*

Where after a reference to High Court under S 17 of the Ajmer Courts Regulation and before the High Court gave its answers the parties referred the matter in dispute to arbitration

Held that until the Ajmer Court passed its final judgment on receiving the answer from the High Court the case must be deemed to be pending judgment and that in spite of the reference to the High Court the agreement to refer to arbitration was valid After the reference to arbitration the court cannot deal with the matter in suit in any way (*Walsh & Wallach JJ*) RAM LAL v DEO RAJ

1922 A L J 876 = A I R 1922 All 173 = 64 I C 601 = 44 A 91

——Sch II Para 10—*Award based on illegal reference is void*

Award made on an illegal reference is absolutely void and does not require to be set aside 47 *Cal* 567 and 48 *M L J* 142 **Foll** 2 *P* 335 **Ref** (*Weston J C*) DEO KARAN v SUGAN CHAND

1935 J 89

——Sch II, Para 14 (a)—*Scope*

The paragraph applies only where the arbitrator has determined some matter not referred to and such matter cannot be separated (*Norman J C.*) OULAD HUSSAIN v ASNAD KHAN

1936 J 55

——Sch II, Para 15—*Court can only set aside the award—It cannot pass a different order*

A Judge is not empowered to set in appeal on an arbitrator If a Court thinks that a finding was arrived at by action which amounted to misconduct then its only course is to set aside the award altogether (*Norman J C*) OULAD HUSSAIN v ASNAD KHAN.

1936 J 55

——Sch II Para 15—*Validity of an award can be challenged when validity of reference is concerned*

Validity of an award can be challenged when the invalidity of the reference is in question 48 *A* 234 **Foll**

A mortgagee in possession can bring a suit for declaration that decree is not binding on him (*Weston J C*) DEO KARAN v SUGAN CHAND

1935 J 89

CIVIL PROCEDURE CODE (1908), S II P 18

——Sch II Para 16—*Decree passed on invalid reference is a nullity*

A decree passed upon an award when there was no valid reference is a nullity (*Weston J C*) DEO KARAN v SUGAN CHAND

1935 J 89

——Sch II, Para 16 (2) and S 104—*Decree on award—No appeal—Revision doubtful*

An appeal against a decree based on an award is incompetent and it is very doubtful whether even a revision application would lie A new objection against an award cannot be allowed in revision (*Jolly J C*) HIRA v LALA

***5 J 1 (I)**

——Sch II Para 20 (2)—*Stranger to reference—Cannot be party in application to file award*

Persons who were not parties to a reference to arbitration cannot claim to be made parties in an application to file the award made therein (*Murphy J C*) MST BAKHTAWARI v GORDHAN RANGA

1 J 7

——Sch II, Para 20—*Not applicable to reference in a suit without an order of the court—But decree may be passed under C P C O 23 R 3*

(*b*) Where in a suit parties have referred their differences to arbitration without order of the court and an award is made a decree cannot be passed by the court in terms of the award under the provisions relating to arbitration In such a case however the transaction may be regarded as a compromise or an adjustment and a

CONTRACT

decree may be passed in terms of it under *Order 23 R 3 C P C, 51 B 908* **Foll** *47 A 637* **Diss** (*Macklin J C*) SHEO NARAIN v HURMA

5 J 56

Sch II Para 22—*Award is a bar to a suit*

Schedule II Para 22 was not intended to set aside the law under which an award is a bar to a suit (*Norman J C*) AMBA LAL v HARI SHANKER

1934 J 81

COMPANIES ACT (VII OF 1913)

——S 3—*Chief Commissioner is High Court*

The Chief Commissioner of Ajmer and Merwara is the High Court for the purposes of the Companies Act for places within its jurisdiction and not the Allahabad High Court (*Mukerji J*) KEKRI PRESS CO LTD

A I R 1926 All 649
=28 A 709=24 A L J 768

CONTRACT

——Executory—*Consideration illegal—Money advanced may be recovered*

Money paid in consideration of an executory contract or purpose which is illegal may be recovered back upon repudiation of the transaction or upon failure of consideration (*Broomfield J C*) GUDHA CO OPERATIVE LABOUR and SAVING SOCIETY LTD v FIRM UDAI RAM BAIJ NATH

5 J

CONTRACT (*Contd*)

——**Implied**—*Party to criminal case and his witness—No contract to pay diet money*

There is no *implied* contract or agreement between a party to a criminal case and his witness for payment of diet money Consequently no suit would lie for its recovery (*Jolly J C*) ALLAH NOOR v MOLA BUX

***3 J 4**

——**Insufficiency of stamp**—*Contract not invalid*

Insufficiency of Stamp duty will not affect the validity of a contract (*Jolly J C*) SUA LAL v. FIRM KANHIYA LAL RAM CHANDER

***3 J 4**

CONTRACT ACT (IX OF 1872)

——**S 16**—*Elements*

The elements of *undue influence* are that one person should be in the position to dominate the will of another and that he should have used that position to obtain an unfair advantage (*Norman J C*) JAWAHAR MAL v NATHI

***5 J 2 (III)**

——**S. 16**—*Fiduciary relation—Contract Prima facie unconscionable—Burden on dominant party*

Where a person, who is in a position to dominate the will of another, enters into a contract with him and the contract appears to be unconscionable the burden lies on the former to show that the contract was not induced by undue influence (*Norman J C*) JAWAHAR MAL v. NATHI.

***5 J. 2 (III)**

CONTRACT ACT (1872), S. 25.

——**S. 16**—*Undue influence—Pleadings inartistic—Still court can grant relief:*

If there are facts on the record to justify the inference of undue influence, the court has power to administer relief notwithstanding inartistic pleadings All that the court has to see is that the adversary is not taken by surprise 77 *I C* 639 **Dist** 1931 *Nag* 63 **Foll** (*Norman J. C*) JAWAHAR MAL DOSI v MST. NATHI

***5 J. 2 (III)**

——**S 23**—*Consideration to obtain withdrawal of prosecution is legal:*

A bond executed by third persons to enable the accused to secure the compounding of an offence is for legal consideration, 53 *C* 51 and 50 *C* 774 **Foll.**

To obtain withdrawal of a prosecution through the proper authorities is not suppression of prosecution, 11 *B.* 566 **Not applicable.** (*Weston J. C*) MOHRI LAL v ALAM ALI

1935 J. 9.

——**S 23**—*Stipulated rate—Must be allowed however high*

(*a*) When there is a stipulated rate of interest the court must allow it however high it may be (*Murphy J. C.*) BEHARI LAL v. AHMED.

1927 S 19.

——**S 25**—*Suit cannot be based on mere acknowledgment*

A mere acknowledgment of an older debt, without a promise to pay, cannot be made the basis of a suit, 1 *A. M. L. J.* 16, 22 *B.* 513, 52 *B.* 521 and 56 *A.* 281 **Foll** 1926 *A. M. L J. Supplement* 4, 1926 *A.*

CONTRACT ACT (1872), S 45.

M L. J Supplement 29, 5 *A M. L J* 51 and 46 *B* 24 **Not Followed.** 3 *C* 1047 **Not applicable**

A distinction should however be drawn between an acknowledgment which contains an express promise to pay and one from which a promise to pay can be inferred (*Weston J C*) NARSINGH DAS v RAM KANWAR

1935 J 14

[For full references See Limitation Act—S 19

—S 45—*Presumption*

While the presumption is that the promisees are joint there is no bar in law to their rights being several By filing a suit alone plaintiff impliedly asserts that the contract was several (*Norman J C*) MIR SARFARAZ ALI v S MUZAFFAR HUSSAIN

1934 J 37

—S 60—*Principal and interest both due—Indefinite payment by debtor—Creditor is entitled to appropriate it to interest—But if debtor stipulates that payment is to be appropriated only to principal creditor must appropriate accordingly or return the money*

A creditor to whom principal and interest are owed is entitled to appropriate any indefinite payment which he gets from a debtor to the payment of interest A debtor might in making a payment stipulate that it was to be applied only to principal If he did so the creditor need not accept the payment on those terms but then he must give back the money or the cheque by which the money is preferred (

CONTRACT ACT (1872), S. 60

Du e thu sh u Sir John Edge and Mr Ameer Ali) R B SETH NEMI CHAND v S RADHA KISHEN

I L R 48 C 839=61 I C 904 =A I R 1922 P C 26=30 M L T 39 =26 C W N 153=14 M L W 391 =1921 M W N 411

—S 60—*Creditor can appropriate at any time*

A creditor is not bound to make his appropriation as soon as the money is paid but can do it at any time An appropriation made in the plaint towards principal can save Limitation *11 A 632* **Dist** (*Norman J C*) DURGA LAL v KANHAIYA LAL

1936 J 34

—S 60—*Creditor s right of apportionment Subsequent amendment*

( ) The creditor s right to apportionment arises only when the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied

(ii) Once it has been held by the Court that any sum which the plaintiff appropriated to a certain khata should not have been so appropriated the plaintiff is justified in amending his account (*Norman J C*) JODH RAJ v RAMZANI

***1934 J 100**

—S 60—*Appropriation by plaintiff—Burden on him*

Where a plaintiff claims a sum of money and admits that certain payments have been made which in themselves would be sufficient to satisfy the debt in suit burden is clearly upon plaintiff to s

appropriated to other debts and were not in satisfaction of the debt in suit (*Jolly J C*) RAMA v RADHA LAL

***5 J 2 (I)**

——S 62 and S 70—*Promissory note—Money lent on promissory note—Promissory note inadmissible for insufficiency of stamp—Loan can be proved orally inspite of the promissory note*

Money was lent on a pro note The pro note was inadmissible for insufficieny stamp The plaint did not mention the pro note The suit was framed as one for the recovery of money lent *Held* A plaintiff can sue on a loan independently of the pro note The acceptance of a negotiable instrument is a conditional and not an absolute discharge *i e* the giving of a pro note does not operate as an absolute re payment of a loan *12 Rang 500 1933 Nag 57 (2), 1932 Oudh 235 11 P 135 21 B 360 25 Cal 821* **Followed** *53 A 111 (F B)* **Not Foll** (*Norman J C*) ONKAR B LLAPH v GIRWAR LAL

1936 J 37

——S 70—*Applies to Doctor s fees*

It is not usual for a doctor to stipulate for his fees He would be entitled to a reasonable fees for his services unless they were intended to be gratuitous (*Norman J C*) ROY DR J M v GHOSH MR N K

***6 J 4**

——S 70—*Washerman*

In absence of agreement a washerman is entitled to reasonable remuneration for his services (*Norman J C*) TAJAMAL HUSAIN v MUHAMAD BUX.

***6 J 1**

——S 74—*If rate of interest penal interest at reasonable rate ought to be awarded*

If the rate of interest is found to be penal the Court ought to award interest at a reasonable rate (*Norman J C*) AMAR CHAND v KANA

***1934 J 101**

——S 74—*If interest penal—Reasonable rate be allowed—If interest is excessive and unfair Court may reduce it*

(*b*) If interest is penal the court may award it at such rate as is reasonable and when it is not penal the court may reduce it if it is excessive and the transaction was substantially unfair under S 74 of the Contract Act and S 3 of the Usurious Loans Act X of 1918 (*Murphy J C*) BEHARI LAL v AHMED.

1927 S 19

——S 74—*Interest from date of bond, on default, is penal*

In so far as interest is to run from date of bond and not from the date of default it is penal There is no law which forbids allowing such interest Unless relief can be granted under some statute such as the Usurious Loans Act or *S 33* of Ajmer Laws Regulation parties must be held to the terms of their contract (*Norman J C*) MOTI LAL NAND LAL v KELA

***6 J 3**

——S 78—*Plaintiff refuses to receive money—Defendant's failure to tender does not entail forfeiture*

Once plaintiff refuses to receive the money unconditionally, the defendants are not bound to tender it and such failure on their part does not amount to forfeiture of

CONTRACT ACT (1872) S 103

their title to the property (Norman J C) AMBA LAL v HARI SHANKER

1934 J 81

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——S. 103—*Railway receipt—Transfer of title can be effected by endorsement and not delivery*

A Railway receipt is an instrument of title But mere delivery of it is not sufficient to transfer the title There must be an endorsement in writing on it (*Jolly J. C*) THE SECRETARY OF STATE v RAM DHAN DAS KALYAN MAL

***3 J 5**

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***3 J 3**

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CONTRACT ACT (1872), S 184

If the Court by its action materially affects the terms of the surety bond without the assent of the surety the latter is discharged *1935 Nagpur 258* **Approved** (*Norman J C*) NATH MAL v ABDUL HAMID

1936 J 1

——S 145—*Surety can recover from principal debtor whatever sum he may have rightfully paid—Wrongful payment explained*

A Surety can recover from the principal debtor whatever sum he has rightfully paid under the guarantee A payment made under a decree passed against the surety cannot be said to be a wrongful payment unless the decree was obtained owing to the collusion or the gross negligence of the surety If the surety fails to put forward a defence, the success of which would be, owing to the divergence of judicial opinion extremely doubtful, he cannot be held to have been grossly negligent (*Norman J C*) HULLASI v SUKHA

1936 J 41

——S 151, S 152 and S 172—*Pawned articles lost—Pawnee not responsible for loss if he has taken reasonable care*

A pawnee is one kind of bailee A bailee is not responsible for the loss of an article bailed if he has taken reasonable care (*Norman J C*) MISRI MAL v SAWAI

***1936 J 210**

——S 184—*Minor can be agent—He [can] bind his Principal—But Principal [can]not sue minor for Damages—Nor*

appropriated to other debts and were not in satisfaction of the debt in suit *(Jolly J C)* RAMA v. RADHA LAL

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—S. 62 and S 70—*Promissory note—Money lent on promissory note—Promissory note inadmissible for insufficiency of stamp—Loan can be proved orally inspite of the promissory note*

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1936 J 37.

—S. 70—*Applies to Doctor's fees*

It is not usual for a doctor to stipulate for his fees He would be entitled to a reasonable fees for his services unless they were intended to be gratuitous *(Norman J C)* ROY, DR. J M. v GHOSH, MR N K

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1934 J 81

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A Railway receipt is an instrument of title But mere delivery of it is not sufficient to transfer the title There must be an endorsement in writing on it (*Jolly J. C*) THE SECRETARY OF STATE v RAM DHAN DAS KALYAN MAL

***3 J 5**

——**S 127**—*Surety bond not executed simultaneously with Principal bond suretyship is without consideration*

If a surety bond is not executed simultaneously with the principal bond, the suretyship is without consideration (*Jolly J C*) DAYA BHAI v. D ONKARSINGH

***3 J 3**

——**S. 135**—*If section 135 of the Contract Act not applicable to a bond given to Court, the equitable principles on which the section is based apply*

If Section 135 of the Contract Act does not apply to a bond given to the Court the equitable principles on which that section is founded do apply, and a discharge can be given to the surety. *1930 Bom 122, 1930 Lah 596* and *56 Mad 625* **Foll** (*Norman J C*) NATH MAL v ABDUL HAMID.

1936 J 1

——**S 135**—*Court materially altering the terms—Surety is discharged*

If the Court by its action materially affects the terms of the surety bond, without the assent of the surety, the latter is discharged, *1935 Nagpur 258* **Approved.** (*Norman J C*) NATH MAL v. ABDUL HAMID.

1936 J 1

——**S 145**—*Surety can recover from principal debtor whatever sum he may have rightfully paid—Wrongful payment explained*

A Surety can recover from the principal debtor whatever sum he has rightfully paid under the guarantee. A payment made under a decree passed against the surety cannot be said to be a wrongful payment unless the decree was obtained owing to the collusion or the gross negligence of the surety. If the surety fails to put forward a defence, the success of which would be, owing to the divergence of judicial opinion extremely doubtful, he cannot be held to have been grossly negligent (*Norman J. C*) HULASI v SUKHA.

1936 J 41

——**S 151, S. 152 and S 172**—*Pawned articles lost—Pawnee not responsible for loss if he has taken reasonable care*

A pawnee is one kind of bailee A bailee is not responsible for the loss of an article bailed if he has taken reasonable care (*Norman J C*) MISRI MAL v. SAWAI

***1936 J 210**

——**S 184**—*Minor can be agent—He can bind his Principal—But Principal cannot sue minor for Damages—Nor can minor sue for commission :*

appropriated to other debts and were not in satisfaction of the debt in suit (*Jolly J C*) RAMA v. RADHA LAL

***5 J 2 (I).**

—S. 62 and S 70—*Promissory note—Money lent on promissory note—Promissory note inadmissible for insufficiency of stamp—Loan can be proved orally inspite of the promissory note*

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1936 J 37.

—S. 70—*Applies to Doctor's fees*

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***6 J 4.**

—S 70—*Washerman*

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A Surety can recover from the principal debtor whatever sum he has rightfully paid under the guarantee A payment made under a decree passed against the surety cannot be said to be a wrongful payment unless the decree was obtained owing to the collusion or the gross negligence of the surety If the surety fails to put forward a defence, the success of which would be, owing to the divergence of judicial opinion extremely doubtful he cannot be held to have been grossly negligent (*Norman J C*) HULLASI v SUKHA

1936 J 41

——**S 151, S 152 and S 172**—*Pawned articles lost—Pawnee not responsible for loss if he has taken reasonable care*

A pawnee is one kind of bailee A bailee is not responsible for the loss of an article bailed if he has taken reasonable care (*Norman J C*) MISRI MAL v SAWAI

***1936 J 210**

——**S 184**—*Minor can be agent—He can bind his Principal—But Principal cannot sue minor for Dar*
can minor sue for co

CONTRACT ACT (1872), S 186

(i) A minor can be an agent under S 184 of the Contract Act and can bind his principal in transactions with third parties But the principal cannot sue the minor agent for damage caused by his default and rights and liabilities being co extensive the minor agent cannot sue his principal for the commission (*Baker J C*) GUL RAJ v FIRM SOHAN LAL GANESH NARAIN.

1926 S. 9

——**S 186**—*Wife can pledge husband s credit for necessaries*

In the absence of a prohibition a wife is entitled to pledge her husband s credit for necessaries (*Murphy J C*) CHARLES HENRY CODD v MANGI LAL

1 J 16

—**S 196 & S 228**—*Agent deviates from Principals instructions—Principal not bound—He may ratify or repudiate*

Principal not liable for Agent's transactions in which the latter has deviated from the former's instruction Principal may ratify such a transaction if it results in profit and may repudiate it if it results in loss (J C) FIRM SHEO NARAIN BAL MUKAND v FIRM GHISA LAL POKHAR MAL

***3 J. 1**

——**S 230**—*Broker—When personal liability*

A broker is an intermediary employed by each dealer for the purpose of bringing him into contact with another dealer Personal liability attaches to him only in the circumstances specified in S 230

COSTS

of the Contract Act He would be personally liable by custom only if a custom is pleaded and proved (*Jolly J. C*) FIRM RAM RATAN RAM CHANDER v GANESH RAM

***4 J 2**

——**S 251**—*Acknowlegment by one partner or contractor—Authority to bind others can be inferred*

The authority of one partner to sign acknowledgments so as to bind other partners may be inferred from circumstancs The same principal applies to co contractors *41 M 247* and *3 R 367* **Foll** (*Norman J C*) PANCHU LAL v MOHAN LAL.

6 J, 39

CONVERSION

See, Tort—Conversion

COSTS

Also See C P C—S 35.
C P C—O 41, R 22

——**Execution of**—*to be claimed when sale proclamation drawn up or before disposal of Execution*

The most suitable time for claiming costs of Execution is when the sale proclamation is drawn up but a request made at any time before the Darkhast is finally disposed of is not too late. (*Norman J C*) POOSAL MAL v KOER

6 J 5

CO OPERATIVE CREDIT SOCIETIES ACT (II OF 1912)

——S. 24—*Applies to order made under S 42 and not to proceedings in execution of such an order*

Liquidator sought execution of his award against legal representative of a deceased member after expiry of one year Lower appellate Court held that S 24 barred the application. *Held*, S 24 had no application because it applied to an order made under S 42 and not to proceedings in execution of such an order. (*Broomfield J. C*) M. LAKSHMI NARAIN v. LAL CHAND.

5 J 30.

——S 29—*Loan to non member is illegal and ultra vires—But suit lies for recovery of money lent*

A Society is prohibited from making a loan to any person other than a member. Such a loan, if made, is illegal and ultra vires But the bond on which the transaction is based does not become invalid and unenforceable at law on that account Such a case is covered by the English rule that money paid in consideration of an executory contract or purpose which is illegal may be recovered back upon repudiation of the transaction, as upon failure of consideration. (*Broomfield J. C*) GUDHA CO OPERATIVE LABOUR AND SAVING SOCIETY LIMITED, v FIRM UDAI RAM BAIJ NATH.

5 J 26

COURT FEES

——**Court Fees**—*Deficient—Cannot be recovered by attachment*

COURT FEES ACT (1870), S. 7

Where after the passing of a decree it is found that the plaint was improperly stamped, it cannot be recovered by attachment of plaintiff's immoveable property. (*Norman J C*) CHAGAN LAL v. CHAGAN LAL.

***6. J 3.**

——**Insufficient**—*Appeal not properly stamped—Court may order party to make up deficiency within limitation – If appeal filed on last day of limitation correct procedure laid down.*

See, C P. C.—O 7, R 11 (c)

——**Revision**—Revision lies on question of Court Fees, *55 A. 274* **Foll.** (*Norman J. C*) CHAIBRI BAI v. NOOR MOHAMAD

6 J. 46

COURT FEES ACT (VII OF 1870)

——S 4—*Memorandum insufficiently stamped—Court not bound to allow time*,

It is not obligatory upon a Court to allow time to remedy a deficiency in Court fee in the case of a memo of appeal. The concession allowed by S 149 C P C. cannot be claimed as of right *38 B. 11* **Diss** *50 A. 980* **Foll.** (*Jolly J C*) SUJA NAND v MOOL CHAND

4 J 27

——S. 7—*On allegations in plaint*

A plaint should be stamped on the allegations contained in it and not on the allegations of the defendant (*Norman J. C.*) CHAIBRI BAI v. NOOR MOHAMMED.

COURT FEES ACT (1870), S 7.

——**S 7**—*Plaintiff can always effect saving of Court Fees by reducing his claim if otherwise permissible*

It is always open to a plaintiff or an appellant to reduce his claim and effect a saving of court fee if otherwise permissible In so far as he submits to the decree appealed against it becomes final and the appeal is limited to the amount in contest on which alone court fee need be paid It is for the court in each case to determine whether the reduction is otherwise permissible *1929 All 308* **Foll** *30 I C 379* and *62 I C 36* **Dist** *C R 51 of 1933* **Modified** (*Norman J C*) B B & C I Ry Co v Edward Mills Co Ltd, Beawar

6 J 53

——**S 7 (IV) (c)**—*Plaintiff cannot put ridiculous figure*

(a) Under S 7 (4) (c) of the Court Fees Act the plaintiff is not entitled arbitrarily to assume a ridiculous figure for the consequential relief (*Murphy J C*) Ladu Ram v R B S Champa Lal

1925 S 11

——**S 7 (V) (B) and S 7 (X)** *Suit for specific performance of contract and possession governed by S 7 (X)—Court Fees to be paid on full consideration and not only on the unpaid portion of the purchase money*

Suit was for specific performance of contract and for possession *Held* it ought to be valued according to the amount of valuation *38 All 292, 11 Cal 228 17 Mad 150*, and *1929 Pat 612* **Foll** *1923 Lah 606* and *16 I C 312* **Dist** Ad valoram Court Fees is to be paid on the full consideration and not only the unpaid portion of the purchase money (*Norman J C*) Sukh Deo v Kunj Lal

1936 J 114

——**S 12**—*Scope*

(4) S 12 refers merely to the determination of the proper court fee payable on any particular class of suit It is only such determination by the trial court that is made final by the section It does not lay down that the determination of the class itself under which a particular suit may fall is also final An Appellate Court is consequently entitled to decide whether the determination of the class of a suit by the trial Court is correct or not (*Macklin J C*) Chatur Bhuj v Ram Kishen Das

5 J 61

——**S 20**—*Process Fees and Process serving establishment—Rules*

See Notification

1935 J (N S)

—— **Sch I, Art 1**—*Counter claim—Court Fees on full amount and not difference*

Ad valorem fee is to be paid on the full amount of the counter claim and not merely on the difference between the claim of the plaintiff and the defendant *45 A 218* **Foll** (*Jolly J C*) Gulab Chand Likhmi Chand v The Mahalaxmi Mills Co Ltd

***5 J 2 (I)**

——**Sch I, Art 1 and Sch II, Art 17 (i) or (vi)**—*Scope*

When a first appeal is rejected for failure to pay proper court fee or is dismissed as time barred for the same cause, Art 17 (i) or (vi) has no application

and the second appeal should be stamped ad valorem under Sch. I, Art 1 *1927 Nag 100* **Diss** (*Norman J C*) HIRA LAL v HAZARI MAL JETH MAL

6 J 16

——Sch 1, Art 4—*Review application should be stamped on the valuation of the plaint or memorandum of appeal*

A review application should be stamped on the valuation in the Memorandum of Appeal *50 M 488* and *57 Cal 679* **Foll** (*Norman J C*) BEHARI LAL v S B BHAGWAN SINGH BAR AT LAW

1936 J 189

——Sch 1, Art 5—*Ad valorem stamp duty*

Ad valorem stamp duty is necessary on a Review application (*Weston J C*) KANHIYA LAL v MST PHULAN

1935 J 22

——Sch II, Art 17 (i) or (vi) and Sch 1, Art 1—*Scope of*

When a first appeal is rejected for failure to pay proper court fee or is dismisses as time barred for the same cause Art 17 (i) or (vi) has no application and the second appeal should be stamped ad valorem under Sch 1 Art 1 *1927 Nag 100* **Diss** (*Norman J C*) HIRA LAL v. HAZARI MAL JETH MAL

6 J 16

——Sch. II, Art. 17 (i)—*Possession in suit under O 21, R 103 C P C.*

When possession is claimed in a suit under O 21 R 103 C P C which is based upon title the proper court fee payable is Rs 10, *5 A M L J 61* **Foll** (*Norman J C*) CHHABRI BAI v. NOOR MOHAMMED

——Sch II, Art 17 (I)—*Suit under O 21, R 103 of C P C to be court feed at Rs 20/*

O 21, R 103 of C. P C enables a suit to be filed on a Court fees of Rs 20 for possession by a person who has been dispossessed in execution of a decree to which he was not a party, and whose application under O 21, R 100 has been disallowed (*Weston J C*) ABDUL GAFFAR v MOHAMED SHAFI.

1935 J 107

——Sch II, Art 17 (1)—*Suit under O 21 R 103 C P C—Possession claimed—Court fee is Rs 10/*

(2) Even if possession is claimed in a suit under R 103 based upon title, the proper court fee payable is Rs 10/ only *9 B 20 35 C 202* **Rel.** (*Macklin J C*) CHATUR BHUJ v RAM KISHEN DAS

5 J 61

——Sch II, Art 17 (VI)—*Mortgage suit—Only personal decree granted—Appeal for obtaining Mortgage decree to be Court feed at Rs 10/*

When a plaintiff, who has partly succeeded appeals the general principle is that the appeal should be valued on the difference between what he has got and what he claims In a case where a personal decree has been granted in a mortgage suit and the plaintiff claims a mortgage decree in appeal the relief claimed cannot be estimated and therefore a stamp of Rs 10/ is sufficient (*Norman J C*) FATEH CHAND v. RAMAN

1934 J 15

——Sch II, Art 17 (VI)—*Partition suit—Muhammedan co sharers—Court*

COURT FEES ACT (1870),—*Concluded.*

The correct method of regarding the relief claimed in a suit for partition was that it was merely a prayer to change the form of enjoyment and could only be valued by deducting from the value of the plaintiff's share as ascertained in the partition the value of his benefical enjoyment as coparcener before partition In such a suit it was impossible to estimate the money value of the suit and such a suit would fall within the provisions of Article 17 (vi) of the Court Fees Act, 1926 *Mad* 122, 1924 *Mad* 207, 1926 *Mad* 678, 1924 *Pat* 640 **Foll** (*Dalal and Pullan J J*) MST ALIMAN BIBI v GULAM AHMAD

2 J 1

CRIMINAL PROCEDURE CODE (V OF 1898)

—S. 12 & S 15—*Hony Magistrates Benches and their powers*

See Notification by Chief Commissioner

1 J 12 (J S)

—S 16-*Rules for the Guidance of Benches of Hony Magistrates*

See D M s Notification

1, J 10 (J S.)

—S. 28 and S 215—*Any offence can be tried by Session Court—Commitment under S 147 I P.C not illegal*

(*b*) By virtue of S 28 of the Cr. P Code any offence under the Indian Penal Code can be tried by the Sessions Court and a commitment for an offence under S 147 I P C is not illegal if the Magistrate thinks that he cannot adequately

CRIMINAL PROCEDURE CODE (1898),S 162

punish the accused, *26 M 592* and *1924 Cal 429* **Foll** (*Murphy J. C*) CROWN v. HAZARI

1927 S 4

—S 42—*Only personal assistance can be demanded—Police cannot require a person to put his house at their disposal*

The assistance which may be demanded clearly is the personal assistance of the person of whom it is demanded The police cannot require a person to put his house at their disposal (*Weston J C.*) JAWAND LAL DUTT CHOWDHRY, MR. v. CROWN

1935 J 1

— S 133—*Not applicable to Shamlat land—Common land not necessarily public land*

Proceedings under S 133 are not appropriate to cases of encroachment on Shamlat land Common land is not necessarily public land (*Weston J. C*) GIRDHARI v. SHAMLAT COMMITTEE, BEAWAR

1935 J. 53

—S 147—*Right to perform Puja is not a right to a user of land*

A right to perform Puja is not a right to a user of land, *52 C 959* **Foll** (*Norman J C*) MST DHAPU v RADHEY LAL.

***1936 J. 218**

—S 162—*Presumptions*

When it is proved that a witness has made a statement to a police officer and such statement is not put in under Section 162, a presumption arises that such state-

ment does not contradict his evidence In the same way if a witness making an identification in Court has been given a previous opportunity of identification before the police a presumption arises that he is pointing out in Court the same persons as he pointed out in the presence of the police since otherwise the defence could under Section 162 contradict him by putting in evidence under Section 162, what he said to the police (*Norman J C*) TOSHIA v KING EMPEROR.

1936 J 50

——**S 162**—*Scope*

Evidence by the police or any other person that particular witness identified a particular accused is excluded by Section 162 If identification is done by question from a police officer and a gesture from a witness then there is a ' Statement within the meaning of 162 ' Statement means the expression of what is in a person's mind however conveyed Nor may the identifying witness himself be asked whether he pointed out some person as the man who robbed him since that is to question him on what he said to the police But Section 162 does not debar the witness from stating that he was shown several men that the accused were among them and that he did then recognise them as his robbers (*Norman J C*) TOSHIA v KING EMPEROR

1936 J 50

——**S 162**—*Scope*

During the final cross examination of a prosecution witness accused asked to be supplied with a copy of the witnesses, police statement The magistrate recorded an order, "A copy be allowed to the accused not just now but he should apply for it *Held* this is not compliance with S 162 Criminal Procedure Code (*Weston J C*) BABU v CROWN

***1934 J 144**

——**S 162**—*Non compliance with the provisions of S 162 vitiates the trial*

Non compliance with the provisions of S 162 or S 342 read with S 364 are illegalities which are sufficient to vitiate the magistrate's Proceedings (*Weston J C*) BABU v CROWN

***1934 J 144**

——**S 164**—*Confessions—How to be recorded*

See Notification by J C

1934 J 6 (N S)

——**S 164**—*Duty of magistrate—To satisfy that confession voluntary*

It is the duty of Magistrates to satisfy themselves that confessions recorded by them have been given voluntarily but no particular form of inquiry is prescribed by law (*Weston J C*) K E v KALYANA

1934 J 130

——**S 164**—*Accused thinks Magistrate to be Police Officer—Confession not invalid*

If while making a confession an accused thought a Magistrate to be a Police Officer his confessional statement would not be invalidated on that account. (*Weston J C*) K E v KALYANA

1935 J 134.

——S 170 S 173 and S 190 (1) (b) and S 344—*Remand under S 344 can be ordered without report under S 173*

It is not correct to say that a Magistrate can only take cognizance on a report submitted under S 173 Under S 190 (1) (b) a Magistrate may take cognizance upon a report in writing of facts which constitute an offence made by a police officer Such report can be made before the investigation is complete A report under S 173 need not be sent to the Magistrate at the time the accused is forwarded under S 170 *53 All 729* **Foll** *(Norman J C)* RAM SINGH v CROWN.

1936 J 85

——S 195—"*Court'—Not confined to court of justice—Wide meaning—Oath immaterial*

(b) The expression Revenue Court is nowhere defined but it has been repeatedly ruled by the several High Courts that the word Court in S 195 Cr P C Code does not mean a Court of Justice and having regard to the obvious purpose for which this section was enacted the widest possible meaning should be given to the word and it will include a tribunal authorised to deal with a particular matter and empowered to receive evidence in that matter in order that a determination may be come *15 C 585, 57 C 872, 37 B 365, 38 B. 642* **Rel** It is immaterial if the evidence is taken on oath or not *21 I C 147* **Foll** *(Murphy J C)* K SHA BUDDIN v SYED ALE RASOOL

1925 S. 26

——S 196—*Sanction—Requirement of 'Sanction' must be proved—It must indicate acts and dates*

It must be proved that the Local Government passed the order sanctioning prosecution It must give an indication as to the acts alleged to have been committed and the dates when the offences are said to have been committed *(Weston J. C)* CROWN v ABDUL SHAKOOR.

1935 J 80

——S. 196—*'Sanction'—Defect in—Cannot be cured by fresh order*

The order sanctioning prosecution must precede the complaint A defect in the order cannot be cured by a fresh order The most satisfactory course is to set aside the proceedings of the Magistrate as held without jurisdiction and to leave the Local Government to take such further action by order and fresh complaint as it may be advised to take *(Weston J C)* CROWN v ABDUL SHAKOOR

1935 J 80

——S. 202—*Statement under cannot form basis of conviction*

Statements recorded under S 202 can not form the basis of a conviction *(Baker J C)* LATIF HUSSAIN v KAJOR.

1 J 37

——S 208—*Provisions Mandatory*

(a) The omission to take evidence offered by the accused under S 208 of the Cr P C is an illegality *(Murphy J C)* GYANA v KING EMPEROR

1925 S 33.

——S 210—*Charge in doubtful cases to be for serious offence*

CRIMINAL PROCEDURE CODE (1898), S 215

In doubtful cases it is better for the Magistrate to leave reduction of the Capital charge to the Court which will try the case (*Weston J C*) GULAB v CROWN

1934 J 136

——S 215—*Omission to record defence evidence—Conviction quashed*

(*b*) Omission to record defence evidence when offered is a point of law and the commitment should be quashed *26 All 177* **Rel** (*Murphy J C*) GYANA v K I

1925 S 33

——S 215 and S 28—*Any offence can be tried by sessions court—Commitment under S 147 I P C not illegal*

(*b*) By virtue of S 28 of the Cr P Code any offence under the Indian Penal Code can be tried by the Sessions Court and a commitment for an offence under S 147 I P C is not illegal if the Magistrate thinks that he cannot adequately punish the accused *26 M 592* and *1924 Cal 429* **Foll** (*Murphy J C*) CROWN v. HAZARI

1927 S 4

——S. 221—*Abetment by conspiracy—Charge should name the persons—If persons not named prosecution cannot prove conspiracy with those persons*

In so far as the abetment was by conspiracy it is not open to the prosecution to rely on conspiracy with any persons not named in the charge (*Norman J C*) RAM SINGH v. CROWN

1936 J 85

——S 226—*Charge before the Sessions Court—Undesirable to alter it to more serious offence*

CRIMINAL PROCEDURE CODE (1898), S 238

It is undesirable that accused persons on being brought before the Sessions Court should find themselves required to meet charges more serious than those on which they have been committed for trial (*Weston J. C*) GULAB v CROWN

1934 J. 136

——S 237—*Wrong section in Complaint Conviction under different section not bad*

The essence of a complaint is the facts set out in it The mention of a wrong section does not invalidate a private complaint and there is no reason why a different rule be applied to a complaint by an officer of Government A conviction under S 471 I P C on a complaint under S 193 I P C is not bad if the conviction is based on the facts set out in the complaint, *4 R 131* and *1 L 523* **Dist** (*Norman J C*) JAGAT RAM v. CROWN

6 J 35

——S 237—*Charge for robbery—Accused may be convicted for receiving stolen property*

A man charged with robbery can be convicted of receiving stolen property *1930 Oudh 353* **Foll** *1926 Lah 132* **Not Foll** (*Norman J. C*) TOSHA v K E

1936 J 50

——S 238—*Court can convict for minor offence in place of major offence*

It is open to a court to convict an accused of a minor offence in place of a major one (*Murphy J. C*) PRATAP v CROWN.

2 J. 51

——S. 238 and S 537—*Not applicable to different offences*

When a man is charged with one offence and without altering the charge is convicted of another offence different in kind the conviction is bad in law S 537 of the Cr P C cannot cure such a defect *(Norman J C)* A POOLAR v GAFUR **6 J 51.**

——S 239—*Provisions as to joint trials not applicable to commitment proceedings*

(*a*) The provisions as to joint trials in *the Criminal Procedure Code* do not apply to commitment proceedings *(Murphy J C)* CROWN v HAZARI **1927 S 4**

——S 239 (d)—*Same Transaction—No charge necessary for all offences committed in the transaction*

The joinder of charges is covered by S 239 (d) Cr P C which provides that persons accused of different offences committed in the course of the same transaction may be tried together Each accused need not be charged with all the offences committed in the transaction The word transaction is construed widely *(Norman J C)* RAM SINGH v CROWN, **1936 J 85**

——S 243—*Plea of guilty how to be recorded*

Particularly in cases where an act is an offence only when committed in certain circumstances, it is essential that a plea of guilty should contain admission not only of the act but also of the circumstances under which it was committed *(Weston J. C)* SADIQ ALI v. CROWN **1934 J 122.**

——S 252 (2) and S 540—*Magistrate has no duty of conducting the prosecution—He has discretion to summon witnesses*

S 252 (2) places no duty upon a Magistrate to conduct the prosecution case and summoning such witnesses as he may find necessary to fill gaps in the prosecution, but a discretion exists to Criminal Courts under S 540 to summon witnesses not called by parties *(Weston J C)* AMAR SINGH v PARTAB SINGH ***1935 J. 66**

——S 256—*Failure to comply with the provisions of—Irregularity can be cured*

Magistrate framed the charge and at once asked the accused if they wished to recall the prosecution witnesses for further cross-examination instead of postponing the question to the next hearing *Held*, Failure to follow strictly the provision of the section is a curable irregularity, *49 A. 316* Foll *(Norman J C)* ONKAR v TEJU. **1936 J 199.**

——S 256 S 342 and S 537—*Omission to question the accused further after the further cross examination of the prosecution witnesses—It is an irregularity which is curable unless prejudice has been occasioned to the accused*

The Court omitted to question the accused further after the further cross examination of the prosection witnesses *Held*, the omission is an irregularity which is curable unless prejudice has been occasioned to the accused *46 M. 449, 49 A 551* and *7 R 70* Foll *2 A. M. L. J. 22,*

1934 A M L J. 126, 51 C 974, 50 B 56 and *15 L 60* Ref (*Norman J C*) BUDHU v. CROWN

1936 J 201

——**S 256**—*Requirements of—Breach is prejudice*

S 256 lays down clearly that the accused shall be called to enter upon his defence after the final cross examination of the Prosecution witnesses

The probability of the accused being prejudiced by breach of the provision of S 256 Cr P C is so obivious that he is not bound to show special prejudice (*Norman J C*) DEBI SINGH v CROWN

1934 J 51

——**S 257**—*Court bound to compel defence witnesses to attend*

Defence witnesses must be called Court is bound to compel the attendance of the defence witnesses (*Baker J C*) LATIF HUSSAIN v KAJOR

1 J 37

——**S 288**—*Statement as Evidence*

If evidence is to be used under S 288 a note should be made on the record at the time it is admitted (*Norman J C*) BHANWAR LAL v SURAJ KARAN

***6 J 2**

——**S 342**—*Applies to summary summons case*

S 342 applies to summons case tried summarily, *90 I C 134* **Foll** (*Baker J C*) CROWN v BINODI LAL

2 J 39

——**S 342**—*Applies to summons cases tried summarily*

Section 342 applies even to summons cases tried summarily (*Baker J C*) PANDIT BINDI LAL v CROWN

1 J 39

——**S 342**—*Non compliance with the provisions of S 162 or S 342 read with S 364 vitiates the trial*

Non compliane with the provisions of S 162 Criminal Procedure Code or S 342 read with S 354 are illegalities which are sufficient to vitate the Magistrates Proceedings (*Weston J C*) BABU v CROWN

***1934 J 144**

——**S 342**——*Non observance——trial vitiated*

Non observance of the provision of S 342 vitiates trial (*Barlee J C*) HAZARI v CROWN

2 J 22

——**S 342**—*Summons case—Non examination of accused vitiates conviction*

In a summons case the ommission by the Magistrates to examine the accused as required by S 342 is an irregularity which vitiates the trial *45 B 672 46 B 441* and *54 C 286* **Foll** *46 M 758* **Not Followed** (*Weston J C*) ABDL AZIZ v CROWN

1934 J 126

——**S 342 and S 364**—*Scope*

A note in the case diary made after conclusion of the cross examination of the prosecution witnesses, that did not wish to make any further

ment, is not compliance with S 342 read with S 364 (*Weston J C*) BABU v CROWN.

***1934 J 144**

——S 342, S 256 and S 537—*Omission to question the accused further after the further cross examination of the prosecution witnesses—It is an irregularity which is curable unless prejudice has been occasioned to the accused*

The Court omitted to question the accused further after the further cross examination of the prosecution witnesses *Held* the omission is an irregularity which is curable unless prejudice has been occasioned to the accused 46 *M* 449 49 *A* 551 and 7 *R* 70 **Foll** 2 *A M L J* 22, 1934 *A M L J* 126 51 *C* 924 50 *B* 56 & 15 *L* 60 **Ref** (*Norman J C*) BUDHU v CROWN

1936 J 201

——S 344—*Remand—To gaol and not police custody*

A remand under S 344 should be to gaol and not to police custody 23 *Bom* 32 and 54 *Cal* 218 **Foll** (*Norman J C*) RAM SINGH v CROWN

1936 J 85.

——S 344 and S 173 and S 190 (1) (b)—*Remand under S 344 can be ordered without report under S 173*

It is not correct to say that a Magistrate can only take cognizance on a report submitted under S 173 Under S 190 (1) (b) a Magistrate may take cognizance upon a report in writing of facts which constitute an offence made by a police officer Such report can be made before

investigation is complete A report under S 173 need not be sent to the Magistrate at the time the accused is forwarded under S 170 53 *All* 729 **Foll** (*Norman J C*) RAM SINGH v CROWN

1936 J 85

——S 364—*Non compliance with the provisions of S 342 read with S 364 vitiates the trial*

Non compliance with the provisions of S 162 Cr P C or S 342 read will S 364 are illegalities which are sufficient to vitiate the magistrate s procdings (*Weston J C*) BABU v CROWN

***1934 J 144**

——S 364 and S 342—*Scope*

A note in the case diary, made after conclusion of the cross examination of the prosecution witnesses that accused did not wish to make any further statement is not compliance with S 342 read with 364 (*Weston J. C*) BABU v CROWN

***1934 J 144**

——S 367—*Judgment shall contain reasons*

S 367 of Cr P C directs that the Judgment shall contain the reasons for the decision Disregard of its provisions makes a judgment bad in law (*Norman J C*) A POOLEI v GAFUR

6 J 51

——S 367—*Judgment must discuss credibility of witnesses*

In a criminal trial the first point to consider is whether the witnesses are speaking the truth and the object of writing a judgment is to make it clear to the

appellate Court that the Magistrate has considered such grounds as are brought forward for supposing that the witnesses are false Failure to discuss them deprives the Judgment of much of its value (*Norman J C*) RAM SINGH v CROWN
1936 J 85

—**S 367 and S 421**—*Appeal summarily dismissed—Judgment need not conform to S 367*

A judgment in conformity with S 367 is not required when an appeal is summarily dismissed under S 421 Criminal Procedure Code, *25 M 531* **Foll** (*Jolly J C*) ONKAR LAL v AMBA DUTTA
***4 J 2**

—**S 369**—*Order once passed cannot be reviewed*

The Criminal Procedure Code does not contemplate any review (*Murphy J C*) KHUDA BUX v GAFOR KHAN
3 J 16

—**S 369**—*Review—Not permissible*

(*a*) A review is not a proceeding known to the Criminal Law (*Murphy J C*) CHITAR MAL v CROWN
1927 S 6

—**S 401**—*Conditions for release of convicts before the expiry of their sentence*

See Notification by C C
1 J 17 (J S)

—**S 401**—*In suitable cases of infanticide sentence may be reduced*

In England by statute of the year 1922 it has been enacted that when a woman who has not fully recovered from effect of giving birth to a child so that the balance of her mind is still disturbed, causes the death of such newly born child she may be found guilty not of murder but of the lessor offence of infanticide The Indian Legislature has not followed the example of England and other European countries in this respect but suitable cases can be dealt with under the powers conferred by section 401 (*Weston J C*) GULAB v CROWN
***1935 J 43**

S 421 and S 377—*Appeal summarily dismissed—Judgment need not conform to S 367*

A judgment in conformity with S 367 is not required when an appeal is summarily dismissed under S 421 Criminal Procedure Code, *25 M 531* **Foll** (*Jolly J C*) ONKAR LAL v AMBA DUTTA.
***4 J 2**

—**S 421 S. 422 and S 423**—*Appeal—No disposal on preliminary point*

(*b*) The Cr P C does not contemplate the disposal of appeals on preliminary points If an appeal is not disposed of summarily a notice must issue to the other side (*Murphy J C*) CHITAR MAL v CROWN
1927 S 6

—**S 423 (b)**—*Fine substituted for imprisonment—Ordinarily no enhancement*

(*a*) Substituting a fine for imprisonment does not ordinarily amount to an enhancement of the sentence (*Murphy J C*) SUROJI RAM v CROWN

——**S. 423**—*Substitution of fine—No enhancement*

The substitution of a sentence of Rs 100 fine in lieu of 25 days rigorous imprisonment is not an enhancement of sentence (*Murphy J C*) SUJAN SINGH v CROWN

1 J 23.

——**S. 438**—*Magistrate's order under S 234 of Municipal Regulation—Revision lies*

A Magistrate acting under S 234 of the Ajmer Municipalities Regulation acts as a court and a Revision lies against his order, 4 *I C* 951 **Foll** 22 *A* 111, 23 *B* 446, 1928 *Mad* 495, 43 *B* 864, 1927 *Sind* 23 **Ref** (*Norman J C*) CROWN v AMBA LAL

5 J 92.

——**S 439 (4)**—*Order of acquittal—Interference in revision—Jurisdiction of High Court—High Court will interfere only in the interest of public justice*

High Court can interfere in revision with an acquittal but should not do so except in the interest of public justice, 42 *Cal* 612 45 *Mad* 913 and 53 *Bom* 564 **Foll** (*Norman J C.*) ARIF ALI v YASIN ALI

1936 J 65

——**S. 439 (5)**—*Appeal provided—No Revision*

No revision lies when an appeal is provided for. (*Murphy J. C*) RAM CHANDRA v. CROWN

1 J 5

——**S. 440**—*Applicant has no right to be* ... *d*

An applicant has no legal right to be heard in support of his application (*Norman J C*) JAGAT RAM v CROWN.

6 J 35

——**S 476**—*Prosecution should not be ordered unless reasonable prospects of conviction—Prosecution not to be refused because conviction not certain*

While prosecution should not be ordered unless there are reasonable prospects of conviction, the courts should not decline to take action merely because a conviction is not certain (*Weston J C*) NATH MAL v RAM SUKH

***1935 J 65**

——**S 476**—*Motive of Prosecutor not material*

The motive of applicant in seeking prosecution is not material (*Weston J.C*) NATH MAL v RAM SUKH

***1935 J 65**

——**S. 476**—*Delay—Effect of*

Delay is a circumstance which should be taken into consideration, what is undue delay will depend upon the circumstances of the case (*Weston J C*) NATH MAL v RAM SUKH

***1935 J 65**

——**S 496, S 497 and S, 498**—*Ordinance (III of 1932)—High court can grant bail*

Provisions of section 4 of Ordinance III of 1932 do not override the provisions of sections 497 and 498 of the Criminal Procedure Code; they merely attract the provisions of section 497 rather than those of section 496 The High Court has consequently authority to grant bail (*Jolly J C*) BHURA LAL v CROWN.

5 J. 5.

——S 503—*Magistrate* [illegible] *of a lady at her house* [illegible]

A Pardanashin lady happening to be a complainant asked to be examined on commission but commission was not issued and the court agreed to record her evidence at her house

Held There is no illegality in it or irregularity because there is no provision in the Criminal Procedure Code requiring a Magistrate to take evidence only at his usual Court (*Murphy J C*) KRISHNA SWARUP v CLOWN

2 J 54

——S 512—*Exact requirements stated*

See, Notification by District Magistrate
2 J 26 (N S)

——S 517—*No offence proved—No absolute rule that property be returned to person from whom it was attached—If property found to belong to complainant it may be handed over to him*

The rule that when no offence is proved the property must be returned to the person from whom it was attached is not absolute The court found that the property belonged to the complaint *Held* It should be handed over to him (*Norman J. C*) CHHOTEY LAL v DAYA KRISHAN

1936 J 115

——S 517—*Scope—Property neither in custody of Court nor produced before it Accused did not commit any offence but the person under whose orders they acted had done so—That person not before the Court—Magistrate has no jurisdiction to pass any orders for disposal of property*

It does not appear that the grain was in the custody of the Court or was produced before it The persons who were accused had not committed any offence but the person under whose order they acted had done so This person however was not before the Court and the finding as against him was no finding at all No offence was committed so far as the parties were concerned *Held* the Magistrate had no jurisdiction to make an order for disposal of property when the property was not in his possession (*Weston J C*) SHAM SINGH v PARTY

1935 J 120

——S 517—*Property does not always follow possession—Real owner should not suffer*

(2) It is not an inevitable rule of law that property follows possession. The true rule is that the real owner should not be allowed to suffer (*Shannon J. C*) SHEO DATT v BABOO LAL

5 J 14

——S 517 and S 520—*Sessions Judge has no jurisdiction under section 520 to revise order under S 517*

(1) Under section 520 of the Cr P. C the Sessions Judge has no jurisdiction to revise an order passed under S 517 of the same Code by a Bench of Magistrates 42 *B* 661 and 1924 *All* 675 Foll (*Shannon J C*) SHEO DATT v BABOO LAL

5 J 14

——S 522—*Scope*

It is enough if the Criminal force or intimidation is used at any stage before

enough if the force or intimidation is used to any tenant or representative of the owner, and the presence of the owner is not essential 1934 *Lah* 454 and A 185 **Dist** (*Weston J C*) RAM NIVAS v BEHARI LAL

1934 J 124

—S 526—*Recording of irrelevant evidence which is likely to cause prejudice is sufficient to warrant a transfer*

Recording of irrelevant evidence which is likely to cause prejudice to accused is sufficient ground to warrant transfer of the case (*Weston J C*) BRIJ NIWAS DAS v ABDUL HAKIM

1935 J 63

—S 526—*Magistrates remark causing alarm to party—Transfer proper*

Any remark by a trying Magistrate causing alarm in the accused s mind is sufficient to justify transfer (*Murphy J C*) MISRI LAL v CHITAR MAL

1 J 22

—S 526—*Appellate court reverses conviction and Remands—Accused be tried by another court*

If an appellate court reverses conviction and remands the case, ordinarily the accused should be tried by a court other than which has already pronounced opinion on the merits (*Murphy J C*) ATTAULLAH KHAN v BUNDU KHAN

3 J 18

—S 526—*Refusal to go into question of title—No ground for transfer:*

Refusal by the trying Magistrate into the question of title does not in form sufficient ground for transfer (*I J C*) BALA v NATHA.

2

—S 526 (8)—*Procedure for grai adjournment*

See Judicial Commissioner s Not tion

2 J 58 (C

—S 526 (8)—*Court specifically formed—Bound to adjourn for rea able time*

The trying court is bound to adj the case for such a period as will affo reasonable time for the application to made and order to be obtained ther But the court should be so specific informed (*Baker J C*) LATIF HUS v KAJOI

1 J

—S 528 and S 537—*District Ma trate transferring the case to himse Absence of written order is mere irr larity*

The City Magistrate was trying a c the District Magistrate tranferred case to his file and tried it *Held,* absence of a written order of transfe an irregularity which can be cured u the section and a fresh trial is unnecess (*Norman J C*) RAM SINGH v CROW

1936 J

—537

See Cr P C—SS 162 238 256 364 and 528

CRIMINAL PROCEDURE CODE (1898) S 540

——S 540 and S 252 (2) — *Magistrate has no duty of conducting the prosecution—He has discretion to summon witnesses*

S. 252 (2) places no duty upon a Magistrate to conduct the prosecution case and summoning such witnesses as he may find necessary to fill gaps in the prosecution, but a discretion exists to Criminal Courts under S 540 to summon witnesses not called by parties (*Weston J. C.*) AMAR SINGH v. PRATAP SINGH

*1935 J 66

——S. 556 *Magistrate issuing a warrant material in case Magistrate should not try case*

If a Magistrate relies upon the presumption created by the warrant issued by himself and if in fact the warrant is material in the case the Magistrate has tried a case in which he has already assisted the prosecution and such proceedings should be set aside

The section is not a technical provision of law to be ignored at convenience (*Weston J. C.*) MILAP CHAND v. CROWN

1935 J 59.

——S. 562—*No sentence can be passed*

No sentence can be passed on a person to whom benefit of S 562 is given (*Baker J. C.*) ALLA BUX v CROWN.

1 J 41

——S 565 (3)—*Amendments to previous rules*

See, Notification by C C

1 J 16 ()

CRIMINAL TRIAL

Approver.

—— Approver—*Evidence of under influence of Pardon*

Where evidence is given under inducement of pardon, the approver is likely to give evidence incriminating the persons who are accused (*Weston J C*) RAM SAHAI v CROWN

1935 J 2

Burden of Proof.

—Burden of Proof—*Not on thief*

A thief is not to prove that he did not

CRIMINAL TRIAL (*Contd*)

Circumstantial Evidence

——**Circumstantial evidence**—*Conviction on—When it capable of the only explanation that accused is guilty*

An accused can only be convicted on purely circumstantial evidence when it is such that it can be explained only on the supposition that the accused is guilty If there is another possible explanation the accused must be acquitted (*Norman J C*) RAM SINGH v CROWN

1936 J 85

Civil Nature

——**Civil Nature**

To take a dispute of a Civil nature to a Criminal Court was an abuse of a Criminal procedure (*Norman J C*) DEBI DIN v ANANT MAL

***1934 J 25**

Confession

Also see Cr P C—S 164

——**Confession**—*Retracted—To be corroborated*

It is a well established rule of prudence that before any reliance is placed upon a retracted confession it should be corroborated by other evidence in material particulars (*Weston J C*) CROWN v NARAIN

1935 J 123

——**Confession**—*Retracted—Must be materially corroborated*

If confessions are retracted it is an ordinary rule of prudence to look for material corroboration of those confessions (*Weston J C*) K E v KALYANA

1934 J 130

CRIMINAL TRIAL (*Contd*)

Conviction

——**Conviction**—*Defective if magistrate bases it on previous judgment which was set aside*

A Judgment is defective if the magistrate has based it mainly on his previous judgment which was set aside (*Murphy J C*) CHITAR MAL v CROWN

3 J 8

——**Conviction** *Illegal—If witness disbelieved on evidence not recorded*

It amounts to an illegality which prejudices the accused to disbelieve his defence on the strength of evidence not recorded in the case and the conviction must be set aside (*Murphy J C*) NANNAH v CROWN

1925 S 31

——**Conviction**—*Court disbelieves prosecution evidence—But accused admitted presence as innocent spectators—No conviction*

When the court disbelieves the prosecution evidence it is not open to it to convict an accused merely on the ground that they admitted their presence at the scene as innocent spectators (*Murphy J C*) SUKHDEO v CROWN

3 J 32

Duty of Magistrate

Also see Cr P C—S 164

——**Duty of Magistrate**—*To question accused—Conduct of accused susceptible of explanation—Accused not asked to explain—Assumption that accused would have given reasonable explanation*

CRIMINAL TRIAL (Contd.)

Where any conduct of the accused is susceptible of reasonable explanation and the accused was not asked to explain it it must be assumed in his favour that he would have given a reasonable explanation. (*Norman J. C.*) RAM SINGH v. CROWN.

1935 J. 85

——**Duty of Magistrate**—*Accused undefended—To ask question of prosecution witnesses to satisfy that they are speaking truth.*

Appellant was undefended and did not cross examine the prosecution witnesses.

Held: In such a case it is the duty of the Magistrate to ask the prosecution witnesses a few questions in order to satisfy himself that they are speaking the truth. (*Norman J. C.*) LATII SHAH v. CROWN.

1936 J. 132

——**Duty of Magistrates**—*Examination of witness.*

It is the duty of the magistrate to see that the prosecutor puts the proper question to witness and if necessary to supplement them. When no vernacular record is kept the magistrate must record every thing that is said, so long as it is relevant, and should read out each sentence as he records it. Unless counsel know what has been recorded they cannot examine and cross examine intelligently. (*Norman J. C.*) TOM GEORGE v. CROWN.

***1934 J. 47**

——**Duty of Magistrate**—*Summary trial—Recording examination of accused:*

In summary trials particulars of the examination of accused are to be entered by the Magistrate not by a Clerk and in the proceedings not in a diary. (*Weston J. C.*) ABDUL AZIZ PALTY v. CROWN.

1934 J. 126.

Evidence.

——**Evidence**—*Appreciation of—Accused burried an ornament. No proof that ornament belong to any particular person.*

The circumstance that an accused person buried an ornament is no proof that the ornament belonged to any particular person. (*Weston J. C.*) K. E. v. KALYANA.

1934 J. 130.

——**Evidence**—*Appreciation of—Value of leading cases.*

No number of cases leading or otherwise can provide a mechanical substitute for that personal appreciation of evidence which is vital in the administration of justice. (*Weston J. C.*) K. E. v. KALYANA.

1934 J. 130

——**Evidence**—*Appreciation of—Uncorroborated statement of Police Officer—Not sufficient.*

To accept uncorroborated statement of police officer, as sufficient to prove possession would obviously create a most dangerous precedent for it would do away with the necessity for any independent evidence and leave the way open to the police to implicate any person against whom their suspicion had been directed. (*Jolly J. C.*) NATHIA v. CROWN.

***5 L. 3 (D)**

CRIMINAL TRIAL (*Contd*)

——**Evidence**—*Appreciation of—Credibility of witnesses—Tests*

(a) As a general rule a sign of truth when several witnesses testify on the same point is their agreement as to all material facts with discrepancies between them on minor points and also that concocted evidence can sometimes be detected by the fact that it is all too consistent and lacks the small variations to be found in average evidence and which are due to varying power of observation and memory of different angles of view and also some allowance must be made for rusticity (*Murphy J. C*) RAI CHAND v CROWN

1927 S 47.

——**Evidence**—*Of Informer—To be regarded with caution*

Informer s evidence is to be regarded with caution whether his action has been prompted by revenge or by the more usual motive of reward (*Weston J C*) MILAP CHAND v CROWN.

1935 J 59

——**Evidence**—*Proof of search*

It is not enough for persons who have been present at searches by the Police to come into the witness box and state that lists prepared at the search bear their signatures These lists generally are not substantive evidence The prosecution should elicit from the witness his personal account as to what happened at the search and what was found If his memory is defective as to what exactly was found he may be allowed to refresh it under S. 159 of the Evidence Act by reference to any list made in his presence at the time of search and read by him at that time (*Weston J C*) K.E. v. MOHAMMAD BUX

***1935 J. 41.**

CRIMINAL TRIAL (*Contd*)

First Information Report

—**First information report**—*Not substantive evidence*

First information report is not substantive evidence Accused cannot be sentenced on statement made therein and not repeated at the trial (*Norman J C.*) LATII SHAH v CROWN.

1936 J. 132

Hony' Magistrates.

——**Hony' Magistrates**—*Their powers*

See, Notification by C. C

1 J 12 (J S)

——**Hony' Magistrates**—*Rules for the guidance of benches of Hony' Magistrates*

See, D M's Notification.

1 J 10 (J. S)

Identification.

——**Identification**—*Magistrate must frame proper questions and not ask generally "Do you identify the accused"*

The question, 'Do you identify the accused' is an improper one. It is for the Police to inform the Magistrate what the witness is supposed to have seen and if they do not do so it is the duty of the Magistrate to find out and then to frame proper questions (*Norman J. C*) BIJJA v CROWN

1936 J. 205

CRIMINAL TRIAL (Contd)

——Identification—*Must be certain*

When an accused person is not known or is very slightly known to witnesses his identification as the offender must be absolutely certain. The mere fact that at the parade the accused was all well to put on coat and cap of an unusual pattern is no ground for failure to identify him if the witnesses had observed the accused sufficiently well. (*Norman J C*) BHAGWAT LAL v. CROWN

[illegible]6 J 2

——Identification—*Of articles [illegible] ordinary make by persons [illegible] them*

Persons who have worn for a considerable time garments or ornaments of ordinary make which bear no special marks of identification, very often are able to identify them satisfactorily by reason of the familiarity of long association which often they are not able to describe in terms of special or distinguishing marks. (*Weston J C*) K. L. v. KALYANA

1934 J 130.

Jurisdiction

——Jurisdiction—*Chart of*

See

1935 J 7 (N S)

—Jurisdiction—*Objection to can be taken at any time—No waiver*

(*b*) Objection on the score of jurisdiction can be made at any time and need not necessarily be made at the earliest opportunity and it cannot be given up by waiver. (*Barlee J C*) DHUMI KHAN v CROWN

1927 S. 1

CRIMINAL TRIAL (Contd)

Practice

—Practice—*City Magistrate cannot act as substitute for the District Magistrate while the latter is on tour*

If there be a practice that when a case has not reached the stage of evidence the City Magistrate acts as a substitute for the Assistant Commissioner if the latter is on tour there is no legal warrant for such practice and it must cease. (*Norman J C*) RAM SINGH v. CROWN

1936 J 85

Practice—*Prosecutions for perjury should not await the final pronouncement of appellate Courts*

Prosecutions for perjury should not await the final pronouncements of Appellate courts on the merits of the suit in which the statements were made. The delay is unfair to the accused who after several years find themselves called upon to answer a charge. If there is a reasonably strong case courts should be prompt to take action. If accused persons consider it in their interests to obtain postponement of their cases pending an appellate pronouncement on the merits of the original suit it is open to them to seek it. (*Weston J C*) KISHAN LAL v. KANHIYA LAL

1935 J 7

—Practice—*Rape—Charge not lodged lightly—But easily made—Difficult to refute—Weight to be attached to character of prosecutrix*

(*a*) It is a well known fact and has often been noticed judicially, that rape is of all false charges the one most easily made and for an innocent accused, the one most difficult to refute and it is known,

CRIMINAL TRIAL (*Contd.*)

that such charges are often falsely made for the most trivial motives though prima facie it would seem that they would not be lodged lightly, owing to the disgrace which having been the victim of such an offence generally entails

(*b*) Very great weight is consequently attached in such cases to the character of the prosecutrix and where she is a grown up woman and no physical signs of the actual rape can be expected from the medical evidence, to any marks of injury on her person and to the general probabilities of the cases to be deduced from the reputation of the prosecutrix. (*Murphy J. C.*) KAMMU v CROWN

1925 S. 39

Procedure.

——Procedure—*Defamation, offence of—Should not be tried by Honorary Magistrates*

The offence of defamation is a highly technical branch of law and it is not possible for a Bench of Honorary Magistrates to properly appreciate the many potentialities in it for the defence or the prosecution Such a case therefore should not be allowed to be tried by a Bench of Honorary Magistrates (*Shannon J. C.*) FATEH CHAND v. JETHMAL.

3 J 72

——Procedure—*Medical evidence—Prosecution should produce the Doctor—Failing that the court should call the Doctor.*

As a matter of course the prosecution should call and examine the Doctor who first examined and treated the injured persons and if it refuses to do so the court should call him and examine. (*Murphy J. C.*) ABDUL GHANI v CROWN.

2 J 47

——Procedure—*Non compliance with the provisions of S 342 or S 162 read with S. 364 vitiates the trial*

Non compliance with the provisions of S. 162 Criminal Procedure Code or S 342 read with S 364 are illegalities which are sufficient to vitiate the Magistrates Proceedings (*Weston J. C.*) BABU v CROWN.

***1934 J. 144**

Review.

——Review.

See, Cr. P. C.—S 369.

Sentence.

——Sentence—*Fine—No point in inflicting fine unless some prospect of accused being able to pay it*

There is no point in inflicting a fine in addition to a heavy sentence of imprisonment unless there is some prospect of the accused being able to pay it (*Norman J. C.*) BIJJA v. CROWN

1936 J. 205

——Sentence—*Greater offence includes lesser*

(*a*) The greater offence includes the lesser and a person accused of an assault on a public servant cannot be convicted also of an offence of obstructing a public servant in the discharge of his public functions A mere flight of the accused is not such an obstruction (*Barlee J. C.*) DHUMI KHAN v CROWN.

1927 S 1

CRIMINAL TRIAL (*Contd.*)

——Sentence—*Previous conviction—Not to be considered in determining guilt or innocence—But may be considered in awarding sentence.*

(*c*) It is not illegal in awarding sentence to take into consideration the character of an accused as shown by his previous convictions into consideration in determining the question of guilt or innocence. (*Brice J. C.*) DHUMI KHAN v. CROWN.

1927 S 1

——Sentence—*Quantum of.*

The Penal law of India does not prescribe any fixed standard of punishment except for certain exceptional offences and a wide discretion as to the punishment to be given is allowed. In exercising this discretion a criminal court should consider the nature of the offence committed, the circumstances under which it was committed, the probability or improbability that it was an isolated act committed without premeditation and the general character and position of the accused in relation to the offence he has committed. (*Weston J. C.*) K. E. v. MOHAMMAD BUX.

***1935 J 41**

——Sentence—*Traffic in cocaine—Deterrent.*

Traffic in cocaine with its terrible results in creating drug addicts should be dealt with by deterrent sentences in appropriate cases. (*Weston J. C.*) K. E. v. MOHAMMAD BUX alias WAFADAR.

***1935 J 41.**

Stay.

——Stay—*Criminal proceedings cannot be stayed till decision of Civil suit.*

CUSTOM.

(*a*) There is no Section in the Cr. P. C. *under which Criminal Proceedings* can be stayed till the decision of a Civil Suit between the parties. (*Murphy J. C.*) NATHU v. BALA.

1925 S 29

Witnesses

——Witnesses—*Diet money—No provision for.*

There are no provisions in the Criminal Procedure Code authorising a Magistrate to direct a complainant to pay a certain sum as expenses or diet money to a witness summoned on his behalf. (*Jolly J. C.*) ALLAH NOOR v. MOLA BUX.

***3 J 4**

CRIMINAL TRIBES ACT (VI OF 1924)

——S. 20—*Rules.*

See C. C.'s Notification.

2 J. 27 (N. S.)

CUSTOM.

——_Essentials._

A commercial usage or custom must also be ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy. (*MacMinn J. C.*) AMBA LAL v. SURAJ MAL.

*** 5 J 1 (II)**

——_Essentials of._

Must be shown to be of immemorial existence, certain and invariable. (*Jolly J. C.*) NATHU v. RAJA RANCHOD SEN.

4 J. 108.

CUSTOM (*Contd*)

——*Adoption among Mahammedans—Strict proof*

(*e*) Adoption is a practice unknown to Mohammadan Law Any custom by which it is recognised among a particular class of Mahammedans should be strictly proved (*Jolly J C*) BASHIR KHAN v MST RAHMAT ILLAHI

4 J 44

——**Gota Workers**—*New employee of workman not liable for latters's liablity to old employee*

There is no custom amongst *Gota* workers of Ajmer by which a workman who takes new employment continues liable for any money that may still be owing from him to his old employee and at the same time the new employer also becomes liable for that money to the old employer either jointly or severally with the workman (*Macklin J C*) AMBA LAL v SURAJ MAL

5 J 1 (II)

——**Mercantile usage**—*Binding*

Market custom is binding on the dealers in that market *5 C 121* **Ref** (*Barlee J C*) FIRM RAMJI DAS RAGHUNATH v FIRM TIRKHA RAM NET RAM

2 J. 25

——**Mercantile usage**—*Payments by Arhtias in Beawar*

By a custom of Beawar, a merchant coming there from another district is allowed to trade only in the name and on the credit of some local *arath* or banking firm which guarantees his dealings and to which on the conclusion of transactions a *paurs*, or memorandum thereof is sent by the stranger merchant

CUSTOM (*Contd*)

C coming to Beawar made several purchases in accordance with the above custom using the firm of S and M as his *arath* On leaving Beawar, he sent S and M a *paurs*, in which all his purchases except the last and largest under which he had taken no delivery and had made no payment, were entered On application by the vendors in the last transaction to S and M as guarantors of C to make good the purchase money, they at first refused on the ground that the transaction was not entered in the *paurs* sent to them, but afterwards they consented to pay the vendors the amount of the loss occasioned by C's failure to pay and take delivery

In a suit by S and M against C to recover the amount so paid

Held, that if the plaintiffs were cognizant of and allowed their name to be used in the last transaction as was shown to have been the case in previous transactions they were according to the custom liable to the vendors and consequently entitled to recover over from the defendant what they had paid and that even if there was no actual authority given at the time of the transaction still as the defendant had used the name of the plaintiffs as his guarantors and had held them out as liable to pay on his behalf for the goods he purchased they were thereby authorized if they thought fit, to make the subsequent payment which they did on behalf of the defendant or (in other words), to ratify the use which the defendant had made of their name and were not deprived of their right to do so by their having for a time repudiated liability (*Sir M E Smith, Sir R P Collier and Sir H S Keating*) S SAMUR MULL v CHOGA LALL

5 C. 421.

DAMAGES

See, Tort—Damage

DANGEROUS DRUGS ACT (IX OF 1930)

——Deterrent sentence

Traffic in cocaine with its terrible results in creating drug addicts should be dealt with by deterrent sentences in appropriate cases (*Weston J C*) K. E. v MOHAMMAD BUX.

***1935 J 41**

——S 14—*Sale of such small quantity of Cocaine that it can be detected only qualitatively—No offence*

A Chemical trace of Cocaine is a quantity so small that it cannot be quantitatively estimated its presence only being detected by qualitative tests Sale of such a substance cannot be called a sale of Cocaine (*Murphy J C*) ZAHUR BEG v CROWN

1925 S 30

DEBTOR AND CREDITOR

——Khata Executed—*It containing item of interest—It is not necessary to prove contract to pay interest*

When a party has executed a Khata in which there is an item of interest it is not necessary for the plaintiff to bring independent evidence of a contract to pay interest. (*Norman J C*) MANGI LAL v BASANTI RAM.

1934 J 1

——Khata—*Execution Admitted—Burden of Proof*

DECREE

See, Evidence Act—S 102

——Khata Baqi—*Whether suit lies on it*

See, Limitation Act—S 19

DECREE

——Ambiguous—*Review proper remedy*

When the meaning of the decree is doubtful review is proper remedy (*Norman J C*) MOHAN LAL v KHEM CHAND

1934 J 30

——Compromise—*See*—C P C—O 23 R 3

—Conditional *Becoming final—Trial court cannot extend time—Review is proper remedy*

When a conditional decree becomes final on the failure of the judgment debtor to comply with its terms it is incapable of being varied by the original court except by means of Review, 35 *A* 582 Rel (*Murphy J C*) MST NATHI v JAGRUP

1927 S. 22

——Damages—*Order awarding damages under S 95 C P C—Need not form part of decree*

(c) Under the new C P C it is not necessary that the order awarding damages under S 95 C P C should form part of the decree 17 *M L J* 310 **Not Appl** (*Baker J C*) F N C KANKARIA & Co v MOHAMMED HUSAIN

1925 S. 17

——Easement—*Form of*

See, 'Easement—Decree'

EASEMENTS ACT (1882), S 33

(2) Every person has a right to add to or build his own premises provided he does so without material invasion of the right of his neighbours

(3) In order to justify the grant of an injunction the threatened disturbance must interfere materially with comfort of the owner An injunction cannot be granted against disturbance of any sort without proof of subtantial damage

(4) The test is laid down by S 33 of of the Easements Act and is the same as in other places where the Easements Act is not in force, *42 C 46 P C.* **Dis.**

(5) In such a case the court is entitled to take into consideration its own opinion formed on personal inspection of the site and base its decision on it (*Jolly J C*) KAN MAL v ASA NAND.

4 J. 84

——S 33—*Diminution of ventilating power by solid construction*

The ventilating powers of the apertures are seriously diminished by the existence of solid structures between them Construction may be said not always to connote obstruction, but clearly as regards ventilation construction immediately at the side of an aperture must produce obstruction (*Weston J C*) KAN MAL v. ASA NAND.

1934 J 113

——S 35—*When injunction or damages—Windows*

Whether relief in such cases, should be by way of injunction, or by the grant of damages, is a matter of the Court's discretion. But when the windows proposed to be closed up are the only means of eagress of foul air, when doors are closed, the proper relief will be by way of injunction. (*Murphy J C*) S. DHUL CHAND v GOPI LAL.

2 J. 73.

ENCROACHMENT

See, Tort—Encroachment.

EVIDENCE ACT (I OF 1872).

——S. 18—*Offer to accept smaller sum by way of compromise is not admission as to amount due*

(*a*) Where a person offers to accept a smaller amount as a matter of compromise, that offer is not an admission as to the proper amount due to him. (*Lords Tomlin, Russell and Sir Lancelot Sanderson*) CHANDRIKA PRASAD v. B B. & C. I. Ry

A I R. 1935 P. C. 59=1935 O. W N. 379=1935 A W. R. 459=1935 R. D 165=1935 All L R 345=61 C L. J 147=39 C W. N 552=68 M. L J. 552=41 M. L W. 617=1935 M W N 434=1935 O L R 249=154 I C 945=37 B L R. 390=37 P. L. R 331=16 U. D. 221=16 L. R A. (Rev) 250

——S 19—*Admission of liability by principal against surety after termination is relevant though not conclusive*

An admission of a principal does not cease to be relevant against the surety because it was made after termination of the transaction for which the surety had bound himself But such admissions are not necessarily conclusive, *5 A.L J. 142*

EVIDENCE ACT (1872) S 21

Diss 27 I C 637 Foll (*Norman J C*) BALLI LAL v RAM DAS

1934 J 10

——S 21 & S 145 *Admission of a party in a previous statement (in writing) is relevant without its being put to the witness—But it will have little evidentiary value*

An admission is revelant whether or not it is put to the party making it. None the less it is a sound rule of practice to put all admissions to the parties who made them if they give evidence and failure to do though it will not make the admissions irrelevant will greatly weaken their force *59 B 111 1930 Lah 603 and 1931 Lal 753* Distinguished (*Norman J C*) BIRDHA v SURAJ MAL

1936 J 23

——S 27—*Scope*

Section 27 makes admissible only statements by an accused to the police as a consequence of which facts are discovered This does not mean that any statements made by an accused antecedent to discovery are admissible (*Weston J C*) RAM SAHAI v CROWN

1935 J 32

——S 27—*Scope—Exact words necessary—Such statement alone insufficient for conviction*

(*a*) In order to decide whether a statement is admissible under S 27 it is necessary to know the exact words used otherwise it is difficult to know whether the alleged discovery of fact was made in consequence of the information so conveyed

EVIDENCE ACT (1872) S 30

(*b*) The principle underlying section 27 is that the actual discovery of a fact is in itself a material gurantee of the truth of the particular information which led to the discovery

( ) Such a statement alone is not sufficient to support a conviction (*Jolly J C*) BALU v CROWN

4 J 100

——S 30—*Corroboration necessary*

(*a*) The ordinary rule of caution is that to form the basis of a conviction some corroboration of such a statement is necessary *23 A 131* Not Foll (*Murphy J C*) SADEY KHAN v CROWN

1925 S 35

——S 30—*Uncorroborated confession of a co accused—Not sufficient for conviction*

A man cannot be convicted on the uncorroborated confession of co accused

The confession of one co accused cannot be corroborated by the confession of another accused *38 B 156* Foll (*Norman J C*) MISRI LAL v CROWN

***1934 J 49**

—S 30—*Two accused tried jointly—One pleaded guilty and was convicted—The trial proceeded against the other—The statement made by the former accused cannot be considered against latter*

L and A tried jointly After charge was formed L at once pleaded guilty and was convicted and sentenced on her own plea A pleaded not guilty and his trial continued *Held* the statement of L made before her conviction could not

EVIDENCE ACT (1872), S 30.

considered against A since on her conviction the trial ceased to be a joint one (*Norman J C*) ALBERT v CROWN

1936 J 203.

——S 30 – *Confession of co accused—Weight to be attached*

The section provides that a court may take into consideration against an accused person a confession made by a co accused person The words 'may take into consideration serve to emphasise the fact that such confessions stand in a category by themselves and do not stand on the same footing as evidence in the case Such confessions are not statements made on oath and the accused against whom they may be taken into consideration has no opportunity to cross-examine the person making the confession It is obvious therefore that the weight to be attached to such confessions as against a co accused is something less than the weight which might he attached to the evidence of an approver (*Jolly J*·*C*) NATHU SINGH v CROWN.

4 J. 72

——S. 34—*Credit entries—Are evidence of agreement to appropriate*

Entries in the books of a creditor may be taken as indicative of agreement to a proposed appropriation by the debtor (Lords *Dunedin* and *Shaw*, Sir *John Edge* and *Mr Amir Ali*) R B. SETH NEMI CHAND v S RADHA KISHEN.

I L R. 48 C. 839 – 61 I C 904 = A I R. 1922 P C. 26 = 30 M. L. T 39 = 26 C W. N 153 = 14 M L W. 391 = 1921 M W N 411.

——S 34—*What is sufficient corroboration of regular accounts*·

EVIDENCE ACT (1872), S 54.

There is no rule of law that the evidence of a party or his servant cannot be sufficient corroboration of regular accounts In cases where it is possible to get independant evidence, an inference adverse to a party may legitimately be drawn if he fails to produce it (*Norman J. C*) MANGI LAL v. MST. HUSAINI.

1934 J 31.

——S 34—*General evidence of plaintiff may be sufficient corroboration*

The evidence of the plaintiff alone may be in law sufficient corroboration of regularly kept accounts A party cannot be expected to remember all the details of an account extending over many months All he can say is that the transaction took place and that they were entered in the accounts. Thus the general evidence of a party that the transaction embodied in the accounts really took place may be corroboration (*Norman J. C*) ABBAS ALI v F BENI GOPAL NARAIN DAS

1934 J 7.

——S 54—*Previous conviction—Not to be considered in determining guilt or innocence—But may be considered in awarding sentence*

(c) It is not illegal in awarding sentence to take into consideration the character of an accused as shown by his previous convictions into consideration in determining the question of guilt or innocence (*Barlee J C.*) DHUMI KHAN v CROWN.

1927 S. 1

——S. 54—*Magistrate should neither elicit nor record evidence of bad character*

EVIDENCE ACT (1872) S. 68.

[illegible] Magistrate [illegible] record [illegible] witness [illegible] J. C.) BRIJ NIWAS DAS v. ABDUL HAFIZ.

1935 J. 63

——**S. 68**—[illegible]

[illegible] be [illegible] When [illegible] required by law to be attested the [illegible] is specifically [illegible] witness must, if alive, be called. If no attesting witness is called the document is not proved (*Norman J. C.*) DAULA NATH v. GANESH MAL.

1936 J. 54

——**S. 74**—*[illegible] record—Certified [illegible] without proof.*

Certified copies of the entries of a public record are admissible without the evidence of the person who originally made them. [illegible] **Foll.** (*Murphy J. C.*) P. SAWAIRI PERSHAD v. MAHABIR PERSHAD.

2 J. 55

——**S. 91**—*Money lent on promissory note—Promissory note inadmissible for insufficiency of stamp—Loan can be proved orally inspite of the promissory note.*

EVIDENCE ACT (1872) S. 92.

Money was lent on a pronote. The pronote was inadmissible for insufficiency of stamp. The plaint did not mention the pronote. The suit was framed as one for the recovery of money lent. *Held*, [illegible] independently of the pronote. The acceptance of a [illegible] operate as an [illegible] **Followed** [illegible] **Not Foll.** (*[illegible] J. C.*) ONKAR BALLABH v. GHEWAL LAL.

1936 J. 37

——**S. 91**—*[illegible] Qabuliat [illegible] Oral evidence not [illegible] evidence of part performance.*

Suit founded on a contract contained in unregistered Qabuliat for more than a year. *Held*: the law of evidence prevents oral evidence of that contract being given. Since a lease includes a Qabuliat and the Qabuliat was for more than one year, the Qabuliat cannot be proved except as evidence of part performance of a contract for the purpose of section 53 A of the Transfer of Property Act. [illegible] **Foll.** (*Norman J. C.*) ATTA DIN v. HUSSAIN BAKSH.

***1936 J. 213**

——**S. 92**—*Evidence that the bond was not to be paid in cash but by medical services—Plea cannot be entertained.*

Suit was on a bond. Defence was that the bond was not to be paid in cash but by medical services to be rendered. *Held*

EVIDENCE ACT (1872) S 92

it was a term of the contract that payment should be made in cash To set up a case that payment was to be made by services was to set up a different contract Such a defence was barred (*Norman J C*) SHEO NARAIN v UMAID SINGH JI

1936 J 107

——S 92—*Oral evidence admissible to show that party signed for self as well as others*

The character in which a party signs a contract is not a term of the contract and section 92 of the Evidence Act is no bar to extraneous evidence being led that a person signing a contract signed on behalf of others as well as himself (*Norman J C*) FIRM OTAR MAL CHATAR BHUJ v FIRM SURAT RAM POONAM CHAND

***5 J 1 (III)**

——S 102—*Adjustment of decree by executory contract—Heavy burden*

When a judgment debtor asks a court in the face of a denial by the decree holder to hold that the latter has agreed to substitute for his decree an oral agreement to deliver some property when admittedly no property has as yet been delivered the burden of proof is heavily upon him to prove the agreement and that the decree has in fact been adjusted The burden of proof upon the judgment debtor would not be discharged by evidence of talk of compromise or by proof of the terms which the judgment debtor was putting forward to secure such a compromise (*Weston J C*) MALA v JAWANA

1935 J 97

——S 102—*Appropriation by plaintiff—Burden on him*

EVIDENCE ACT (1872) S 102

Where a plaintiff claims a sum of money and admits that certain payments have been made which in themselves would be sufficient to satisfy the debt in suit the burden is clearly upon plaintiff to show that such payments had been properly appropriated to other debts and were not in satisfaction of the debt in suit (*Jolly J C*) RAMA v RADHAI LAL

***5 J 2 (I)**

——S 102—*Consideration—Plaintiff admits that bond partly for cash and partly in lieu of two former bonds—Burden on plaintiff*

Suit on bond Bond and plaint recited that it was for cash Defendant urged that it was for the balance of money due on a mortgage *Held*, onus of proving this assertion was on defendant But in his evidence plaintiff admitted that bond was partly for cash and partly in lieu of two former bonds which were returned *Held also*, this threw the burden of proving consideration on the plaintiff (*Norman J C*) MADHU v SARDAR MAL

***1936 J 216**

——S 102—*Consideration—Bond executed by guardian of a minor – Consideration past debt of the minor's father—Creditor must prove that consideration good*

When a bond is executed by the natural guardian of a minor and the consideration for it is past debts due by the minor's father the creditor must prove affirmatively that the consideration for the bond was good i e that the debts in lieu of which it was executed were not time barred (*Norman J C*) CHANDAN MAL v JETHA

1934 J 68.

EVIDENCE ACT (1872), S 102.

——S 102—*Consideration—Not as recited, Plaintiff admitting—Burden is shifted on him to prove consideration*

Though under section 118 of the Negotiable Instruments Act there is a presumption that a pro note is for consideration and the burden of proof lies on the defendant to prove the lack of it, yet when the plaintiff himself has admitted that the consideration was not as recited in the pro note the burden is shifted to the plaintiff to prove his allegations 1 A. 158 **Foll** (*Jolly J. C*) S. SCOTT v. SHIO NARAIN

***4 J 3**

——S 102—*Custom of Pre-emption—Onus on plaintiff*

The burden of proving a custom of pre-emption in the Sub division in which the property is situate lies upon the plaintiff 2 A M L J 23 **Foll** (*Jolly J C*) QADAR BUX v ABDUL HALIB

4 J 81.

——S 102—*Fiduciary relation—Contract prima facie unconscionable—Burden on dominant party*

Where a person who is in a position to dominate the will of another enters into a contract with him and the contract appears to be unconscionable the burden lies on the former to show that the contract was not induced by undue influence (*Norman J. C*) JAWAHAR MAL v NATHI

***5 J 2 (III)**

EVIDENCE ACT (1872), S 110.

(*a*) When execution of a Khata Baqi is admitted or proved the burd proof of non receipt of consideration on the defendant under S 101 an of the Indian Evidence Act, *A I R Cal 171 F B* and *37 All 71* **Foll** (*E J C*) MUKNA v BANNA

1926

——S 102—*Malicious Prosecution—on Plaintiff*

Onus of proving want of reaso and probable cause is on the pla (*Murphy J C*) S. ABDUL RAHMA DIDAR BUX.

3 J

——S 102—*Ownership—On person a ing ownership*

(1) (*a*) A person who alleges that perty conveyed to another belongs to must prove his allegation and pro beyond reasonable doubt *69 I C 67 1926 P C. 77* **Rel** (*Shannon J* ABDUL BASHIR v MST BISMILLAH

5 J

——S 106—*Fact within special knowl of a person—Burden of proof on him*

When a fact is within the special k ledge of a party the burden of proving fact lies upon him (*Norman J* AMOLAK CHAND v RAM NATH NARAIN.

1936 J

——S 110—*Burden of proof*

Possession means possession reasonable period and what is reason period will depend on the character of property (*Norman J C*) HARI DA

EVIDENCE ACT (1872), S 92

it was a term of the contract that payment should be made in cash To set up a case that payment was to be made by services was to set up a different contract Such a defence was barred (*Norman J C.*) SHEO NARAIN v UMAID SINGH JI.

1936 J 107.

——**S 92**—*Oral evidence admissible to show that party signed for self as well as others*

The character in which a party signs a contract is not a term of the contract and section 92 of the Evidence Act is no bar to extraneous evidence being led that a person signing a contract signed on behalf of others as well as himself (*Norman J. C*) FIRM OTAR MAL CHATAR BHUJ v. FIRM SURAT RAM POONAM CHAND.

***5 J. 1 (III)**

——**S. 102**—*Adjustment of decree by executory contract—Heavy burden*

When a judgment debtor asks a court in the face of a denial by the decree holder to hold that the latter has agreed to substitute for his decree an oral agreement to deliver some property when admittedly no property has as yet been delivered, the burden of proof is heavily upon him to prove the agreement and that the decree has in fact been adjusted The burden of proof upon the judgment debtor would not be discharged by evidence of talk of compromise or by proof of the terms which the judgment debtor was putting forward to secure such a compromise (*Weston J. C.*) MALA v. JAWANA.

1935 J. 97.

——**S. 102**—*Appropriation by plaintiff—Burden on him*

EVIDENCE ACT (1872) S. 102

Where a plaintiff claims a sum of money and admits that certain payments have been made which in themselves would be sufficient to satisfy the debt in suit the burden is clearly upon plaintiff to show that such payments had been properly appropriated to other debts and were not in satisfaction of the debt in suit (*Jolly J. C*) RAMA v RADHAI LAL.

***5 J 2 (I)**

——**S 102**—*Consideration—Plaintiff admits that bond partly for cash and partly in lieu of two former bonds—Burden on plaintif*

Suit on bond Bond and plaint recited that it was for cash Defendant urged that it was for the balance of money due on a mortgage *Held*, onus of proving this assertion was on defendant But in his evidence plaintiff admitted that bond was partly for cash and partly in lieu of two former bonds which were returned *Held also*, this threw the burden of proving consideration on the plaintiff (*Norman J. C*) MADHU v SARDAR MAL.

***1936 J. 216**

——**S. 102**—*Consideration—Bond executed by guardian of a minor – Consideration past debt of the minor's father—Creditor must prove that consideration good*

When a bond is executed by the natural guardian of a minor and the consideration for it is past debts due by the minor's father the creditor must prove affirmatively that the consideration for the bond was good, i e. that the debts in lieu of which it was executed were not time barred (*Norman J. C.*) CHANDAN MAL v. JETHA

1934 J 68.

EVIDENCE ACT (1872) S 102

——S 102—*Consideration—Not as recited—Plaintiff admitting—Burden is shifted on him to prove consideration*

Though under section 118 of the Negotiable Instrument Act there is a presumption that a promissory note is for consideration and the burden of proof lies on the defendant to prove the lack of it yet when the plaintiff himself has admitted that the consideration was not as recited in the pronote the burden is shifted to the plaintiff to prove his allegations *1 A 158* **Foll** (*Jolly J C*) S S[illegible] v SHEO NARAIN

*4 J 3

——S 102—*Custom of Preemption—Onus on plaintiff*

The burden of proving a custom of preemption in the Sub division in which the property is situate lies upon the plaintiff *4 A M L J 23* **Foll** (*Jolly J C*) QADAR BUX v ABDUL HABIB

4 J 81

——S. 102—*Fiduciary relation—Contract prima facia unconscionable—Burden on dominant party*

Where a person who is in a position to dominate the will of another enters into a contract with him and the contract appears to be unconscionable the burden lies on the former to show that the contract was not induced by undue influence (*Norman J C*) JAWAHAR MAL v NATHU

*5 J 2 (III)

——S 102—*Khata Baqi—Execution admitted—Burden on Defendant*

EVIDENCE ACT (1872), S 110.

(*a*) When execution of a Khata Bahi Baqi is admitted or proved the burden of proof of non receipt of consideration lies on the defendant under S 101 and 102 of the *Indian Evidence Act*, *A I. R 1925 Cal 171 F B* and *37 All 71* **Foll** (*Baker J C*) MUKNA v BANNA

1926 S 4

——S 102—*Malicious Prosecution—Onus on Plaintiff*

Onus of proving want of reasonable and probable cause is on the plaintiff (*Murphy J C*) S ABDUL RAHMAN v DIDAR BUX.

3 J 35

——S 102—*Ownership—On person alleging ownership*

(1) (*a*) A person who alleges that property conveyed to another belongs to him must prove his allegation and prove it beyond reasonable doubt, *69 I C 67* and *1926 P. C 77* **Rel** (*Shannon J C*) ABDUL BASHIR v MST BISMILLAH BIBI.

5 J 36

——S 106—*Fact within special knowledge of a person—Burden of proof on him*

When a fact is within the special knowledge of a party the burden of proving that fact lies upon him (*Norman J C*) AMOLAK CHAND v RAM NATH RAM NARAIN

1936 J 104

——S 110—*Burden of proof*

Possession means "possession for reasonable period and what is reasonable period will depend on the character of the property (*Norman J C*) HARI DAS v. MUNICIPAL COMMITTEE, AJMER

1934 J, 6

EVIDENCE ACT (1872), S 110

——S 110—*Redemption suit—Plaintiff must show prima facie subsisting title*

(3) In a suit for possession of land by redemption of a mortgage the plaintiff is bound to show prima facie that he has a title subsisting at the date of the suit, *11 A 438* **Foll.** (*Broomfield J C*) GHISA LAL v. SUJAN MAL

5 J 21

——S 110—*Mortgage entered in settlement Register—No proof of prima facie title*

(3) The mention of a mortgage in the settlement Register cannot be regarded as prima facie proof that the mortgage is still subsisting, *42 A 575* **Foll.** (*Broomfield J. C*) GHISA LAL v SUJAN MAL

5 J 21

——S. 114—*Consideration for a bond was past debt—Presumption that 'past debt' was not time barred Bond*

Where the consideration for the bond is past debt it is a proper presumption against the executant that the debt for which the bond was taken was not time barred (*Norman J. C*) CHANDAN MAL v JETHA

1934 J 68

——S. 114, illust (b) and S 133—*Accomplice—Evidence of, requires corroboration—Rule and Exception explained*

The evidence of accomplices requires corroboration in material particulars One accomplice cannot be said to corroborate another so as to do away with the necessity for corroboration, *8 A. 306* **Foll.**

EVIDENCE ACT (1872), S. 116.

In exceptional cases a court may be justified in convicting on uncorroborated accomplice evidence But such accomplice evidence must be of a kind which a Magistrate after very careful scrutiny with the law present in his mind, can sustain in holding trustworthy inspite of the usual restrictive rule *35 M. 247* and *397* **Rel.** The mere absence of a proved motive for giving false evidence cannot be regarded as a good reason for relying on the evidence of accomplices (*Broomfield J. C.*) SIKANDER ALI v. PAPPU.

5 J 17.

——S, 115—*Representation under mistake of fact—No Estoppel.*

(*b*) A representation made under a mistake of fact does not amount to an estoppel It should be intentional (*Murphy J. C*) B. B. & C I. Ry v. FIRM JAMNA LAL RAM NIVAS

1925 S. 14

——S 115—*Witness admitted that he undertook responsibility of debt—Decree passed because of that admission—Suit against that witness—Witnesses estopped from denying liabilty.*

When a decree in a suit was passed on the basis of an admission by a witness that he had undertaken responsibility for the amount, such witness is estopped from denying in a suit against himself that the amount was due from him (*Murphy J. C*) SOOWA LAL v. FIRM LOKMAN DAS TARA CHAND

1 J 13

——S. 116—*Tenant in possession cannot deny lessor's title.*

(b) Tenant cannot dispute his lessor's title so long as he remains in possession under an agreement which he has made with them (*Lords Tomlin Russell and Sir Lancelot Sanderson*) CHANDRIKA PRASAD v. B B & C I Ry

A. I R 1935 P C 59 = 1935 O W.N 379 = 1935 A W. R. 459 = 1935 R D. 165 = 1935 All L. R 345 = 61 C L. J 147 = 39 C W N. 552 = 68 M L. J 552 = 41 M L. W. 617 = 1935 M W. N. 434 = 1935 O. L. R 249 = 154 I C 915 = 37 B L R 390 = 37 P. L. R. 331 = 16 U D 221 = 16 L R A. Rev. 250

——S 116—*Tenant estopped from denying his landlord's title even though possession prior to the execution of the rent note*

A tenant is estopped from denying his landlord's title even though he had possession prior to the execution of the rent note, *36 I C 817, 50 I. C 591, 51 B. 157, 1923 All. 53* **Foll** *25 I C. 615, 1924 Nag. 62* **Diss** (*Norman J C*) RAM KISHEN v RAM CHANDER.

1934 J 65

——S 116—*Estoppel—Tenant cannot dispute landlord's title*

While a tenant retains the possession he can not deny his landlord's title If he finds that he was the real owner at the date of the lease and executed lease under mistake then he must either surrender possession and then sue in ejectment or bring a suit for a declaration The question of title as between him and his landlord cannot be gone into a rent suit (*Murphy J. C.*) M. D. S G. GORDHAN LAL v ROMAN CATHOLIC MISSION

3 J. 11.

——S 116—*Tenant can allege fraud, misrepresentation or mistake of fact:*

It is open to the tenant to allege fraud, misrepresentation or mistake of fact, which latter expression will include ignorance of his lessor's want of title (*Norman J. C.*) RAM KISHEN v. RAM CHANDER.

1934 J. 65.

——S 133—*Evidence requires corroboration—Rule and Exception explaind:*

The evidence of accomplices requires corroboration in material particulars One accomplice cannot be said to corroborate another so as to do away with the necessity for corroboration, *8 A. 306* **Foll.** In exceptional cases a court may be justified in convicting on uncorroborated accomplice evidence But such accomplice evidence must be of a kind which a Magistrate after very careful scrutiny with the law present in his mind, can sustain in holding trustworthy inspite of the usual restrictive rule, *35 M 217* and *397* **Rel.** The mere absence of a proved motive for giving false evidence cannot be regarded as a good reason for relying on the evidence of accomplices (*Bromfield J. C*) SIKANDER ALI v. PAPPU.

5 J 17.

——S 145 and S 21—*Admission of a party in a previous statement (in writing) is relevant without its being put to the witness—But it will have little evidentiary value:*

An admission is relevant whether or not it is put to the party making it None the less it is a sound rule of practice to put all admissions to the parties who made them, if they give evidence, and fail

FACTORIES ACT (XII OF 1911)

——S 2 (2)—*Persons packing ice in saw dust are employed'*

Persons employed for packing of ice in saw dust fall under the definition of the word employed as it is a process towards finishing of the article to a stage when it is in a suitable condition to be put on the market (*Jolly J C*) B PRAG NARAIN v CROWN

*3 J 1

——S 18 (4)—*Rules framed thereunder—Their breach—Is breach of the Section itself*

A breach of the *rules* made under S 18 (4) is a breech of S 18 (4) and falls under S 41 of the Act. (*Baker J C*) CROWN v P. BINODI LAL

2 J 39

——S 24—*Scope*

The object of the section appears to mean that the person actually committing the offence should be brought to justice

It also appears that the Manager can adduce evidence to escape his own responsibilities only when he has actually charged the offender and proved offence against him (*Baker J C*) CROWN v P BINODI LAL.

2 J 39

——S 41—*Breach of rules under S 18(4)*

A breach of the *rules* under S 18 (4) is a breach of S 18 (4) and falls under S 41 of the Act (*Baker J C*) CROWN v P BINODI LAL

2 J 39

GAMBLING ACT.

See, Public Gambling Act

GENERAL CLAUSES ACT (X OF 1897)

——S 26—*Abetment under Salt Act—Can be punished under S 117 I P C—Special Act does not always override General Act*

(*b*) Whether an act is a seperate offence or not under the Penal Code is immaterial by virtue of S 26 of the General Clauses Act and S 71 of the I P C. it is not illegal to punish abetment of an offence under the Salt Act under S 117 of the I P C even if a punishment is provided by the salt Act itself for such an offence The principle that the provisons of a Special Act override the provisions of a General Act has been accorded very considerable but not universal recognition and the provisions of S 5 of the I P C are to be read in a manner that would reconcile them with those of section 26 of the General Clauses Act The provisions of a General Act would have no application only when the provisions of a Special Act have been so drafted as to exclude the application of the General Act specifically or by necessary implication The use of the words 'within the meaning of the Indian Penal Code in S 9 (*c*) of the Salt Act does not specifically or by necessary implication exclude the application of the provisions of the I P C To make the provisions of S 26 of the General Act and S 71 of the I P C. applicable it is not necessary that an act should be an offence both under the Special and the General Act (*Jolly J. C*) CHAND KARAN SARDA, ADVOCATE in Re CROWN v P. SOHAN LAL

4 J 1

GRANT

——Best evidence

The best evidence of the nature of a grant is the document itself by which the grant was made (*Jolly J C*) BASHIR KHAN v MST. RAHMAT ILLAHI

4 J 44

——Presumption—*Independence* ... *of*

(c) Successive enjoyment for generations without interference of land granted to the original grantee for maintenance justifies the presumption that the original grant was intended to be absolute *M 571* **Foll** (*Jolly J C*) BASHIR KHAN v MST RAHMAT ILLAHI

4 J 44

——Service inam—*When resumable*

(b) A combination of an interest in land and an obligation as to service falls under three heads.

(i) It may be a grant of land burdened with service

(ii) A grant in consideration of past and future services

(iii) A grant of an office the services attached to which are remunerated by an interest in land

In the first two classes in the absence of specific provision to that effect the grant would not be resumable at will In the third class it would be resumable when the service ceased to be performed *28 B 305* **Foll** (*Jolly J C*) BASIR KHAN v MST. RAHMAT ILLHI

4 J 44

GUARDIAN AND WARDS ACT (VII OF 1890)

——S 12 *Court has no power to restrain a marriage contrary to Child Marriage Restraint Act*

Court has no power to interfere to restrain a marriage which is contrary to the Child Marriage Restraint Act (*Norman J C*) MR MAHENDRA LAL v MANCI LAL

1936 J 182

——S 12 S 47 and S 48—*No appeal against order refusing to issue an interim injunction*

Application under Section 12 of the Guardian and Wards Act to restrain marriage on the ground that the bridegroom was under 18 years of age Court rejected the application *Held*, no appeal lies (*Norman J C*) MR MAHENDRA LAL v MANCI LAL

1936 J 182

——S 19 (b)—*Natural guardian living —Ordinarily legal guardian be not appointed*

When the court finds that there exists a natural guardian and there is no special reason for appointing a legal guardian the Court should not appoint a guardian (*Murphy J C*) MST RAM PEARI

3 J 43

——S 19 and S 25 (1)—*Father is a natural guardian—He may entrust custody to another—Such authority is revocable—But court will consider minor s welfare—Strong case must be made out for refusing custody of father*

FACTORIES ACT (XII OF 1911)

——S. 2 (2)—*Persons packing ice in saw dust are 'employed'*

Persons employed for packing of ice in saw-dust fall under the definition of the word employed' as it is a process towards finishing of the article to a stage when it is in a suitable condition to be put on the market. *(Jolly J C)* B PRAG NARAIN v. CROWN

*3 J 1.

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A breach of the *rules* made under S 18 (4) is a breech of S 18 (4) and falls under S 41 of the Act *(Baker J C)* CROWN v. P. BINODI LAL

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2 J. 39

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——S 26—*Abetment under Salt Act—Can be punished under S 117 I P. C—Special Act does not always override General Act*

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4 J. 1

GRANT

——Best evidence

The best ev[illegible] of the nature of a grant is the [illegible] itself by which the grant [illegible] (Jolly J. C.) BASHIR KHAN v. MST. RAHMAT ILLAHI.

4 J. 44

——Presumption—*[illegible]*

(*a*) Successive enjoyment for generations without interference of land granted to the original grantee for maintenance justifies the presumption that the original grant was intended to be absolute. [illegible] Foll. (*Jolly J. C.*) BASHIR KHAN v. MST. RAHMAT ILLAHI.

4 J. 44

——Service inam—*When resumable*

(*b*) A combination of an interest in land and an obligation as to service falls under three heads.

(*i*) It may be a grant of land burdened with service.

(*ii*) A grant in consideration of past and future services.

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In the first two classes in the absence of specific provision to that effect the grant would not be resumable at will. In the third class it would be resumable when the service ceased to be performed. *28 B. 305* Foll. (*Jolly J. C.*) BASIR KHAN v. MST. RAHMAT ILLHI.

4 J. 44.

GUARDIAN AND WARDS ACT (VII OF 1890)

——S. 12—*Court has no power to restrain a marriage contrary to Child Marriage Restraint Act*

Court has no power to interfere to restrain a marriage which is contrary to the Child Marriage Restraint Act. (*Norman J. C.*) MR. MAHENDRA LAL v. MANGI LAL.

1936 J. 182

——S. 12, S. 47 and S. 48—*No appeal against order refusing to issue ad interim injunction*

Application under Section 12 of the Guardian and Wards Act to restrain marriage on the ground that the bridegroom was under 18 years of age. Court rejected the application. *Held*, no appeal lies. (*Norman J. C.*) MR. MAHENDRA LAL v. MANGI LAL.

1936 J. 182.

——S. 19 (b)—*Natural guardian living—Ordinarily legal guardian be not appointed*

When the court finds that there exists a natural guardian and there is no special reason for appointing a legal guardian the Court should not appoint a guardian. (*Murphy J. C.*) MST. RAM PYARI.

3 J. 43.

——S. 19 and S. 25 (1)—*Father is a natural guardian—He may entrust custody to another—Such authority is revocable—But court will consider minor's welfare—Strong case must be made out for refusing custody of father.*

(a) The father is the natural guardian of the child. He may in the exercise of his discretion as guardian, entrust the custody and education of his children to another but the authority he thus confers is revocable and if the welfare of the children demands it, he can notwithstanding any contract to the contrary take the custody and education of the minor into his own hands but the welfare of the minor has to be taken into consideration under S 25 (1) of the Guardians and Wards Act

(b) What is for the child s welfare will depend on the circumstances of each particular case but a strong case should be made out for refusing custody to a father

(c) Courts in India exercise equity jurisdiction and a clear discretion is conferred on them by S 25 to refuse custody of children to their father if their welfare so demands This power would be exercised to control the father s or guardian's legal rights of custody when their capricious exercise would materially interfere with the happiness and welfare of the child or when such rights have been forfeited by conduct or acquiesence, or when the father has so conducted himself or is placed in such a position as to render it not merely better for the children but essential to their welfare in some very serious or important respect that his rights should be suspended or interfered with *16 A. 700, 38 M 807 96 I C 617, 23 C. 290, 1893 Q B 232* **Rel.** (*Baker J C*) R J OLIVER MR v MR J BACK

1926 S 49

—S 22 (2)—*District Nazir not entitled to any fees*

The Sub Section applies to all officers of Government appointed as guardians. The district Nazir is consequently not entitled to receive any fees out of a minor s estate for the work done by him as minor s guardian *24 B 9*, **Diss.**

District Nazir cannot be appointed guardian in his personal capacity as he is not related or in any way connected with the minor (*Norman J C*) FATEH CHAND v DISTRICT NAZIR

***1934 J 47**

——S 25 (1) and S 19—*Father is a natural guardian—He may entrust custody to another—Such authority is revocable—But court will consider minor s welfare—Strong case must be made out for refusing custody of father*

See S 19 above

——S 39 (b)—*Guardian must be resident of British India*

This section implies that the Guardian appointed should be a resident in British India for otherwise the court could not control such a guardian (*Murphy J C*) NARAIN v CHANDER AND CHOCA

3 J 37

——S 47, S 48 and S 12—*No appeal against order refusing to issue an interim injunction*

See, S 12 above

IMPROVEMENTS

See Practice—Improvements.

INCOME TAX ACT (IX OF 1922).

——Ss 23 and S 31 *Plea of division of shares of joint family should not be taken at time of appeal but must be taken at time of assessment*

(b) The plea that certain shares have been divided between the members of a joint Hindu family must be raised at the time of making an assessment under S 23 and it cannot be raised for the first time on appeal against the assessment. (*per Bennet J*) R P SETH BIRADHMAI LODHA v. INCOME TAX COMMISSIONER, AJMER

A.I.R. 1934 All 217=56 A 504=1934 A L.J 1213=153 I C 722.

——S. 25-A—*S 25 A has no application in case of partial division of joint property*

In the case of a partial division of a joint family property S 25 A has no application (*Niamatullah & Bennet JJ*) R B SETH BIRADHMAI LODHA v INCOME TAX COMMISSIONER, AJMER.

A. I R 1934 All 217=56 A 504=1934 A. L. J 1213=153 I C. 722

——S. 25 A—*Partition need not necessarily be by metes and bounds*

(*d*) Partition contemplated by S 25 A is not necessarily a partition by metes and bounds. (*Niamatullah & Bennet JJ*) R B. SETH BIRADHMAI LODHA v INCOME TAX COMMISSIONER, AJMER

A.I.R. 1934 All. 217=56 A 504=1934 A. L J. 1213=153 I C 722

INCOME TAX ACT (1922), S 66

——Ss 31 and 23—*Plea of division of shares of joint family should not be taken at time of appeal but must be taken at time of assessment*

See S 23 above

——S 31 (2)—*No analogy between O. 41, R 27 C P C.—Assistant Commissioner has unrestricted discretion to make further enquiry*

No analogy can be drawn from O 41, R 27 Civil P C to determine the powers of the Assistant Commissioner hearing an appeal under the Income tax Act, S. 31 (2), as the latter gives unrestricted discretion to the Assistant Commissioner to make further enquiry, that is, to obtain more evidence throwing light on the question which he is called upon to decide, while O. 41, R. 27 confers very limited powers upon a court of appeal in the matter of admitting fresh evidence. (*per Niamat Ullah J*) R. B. BIRADHMAI LODHA v. INCOME-TAX COMMISSIONER, AJMER

A I R. 1934 All. 217=I L R. 56 A 504 1934 A L J 1213=153 I C 722

——S 66—*High Court can decide the question of law arising from statement of Commissioner*

(*c*) It is open to the High Court when hearing the case on the statement of the Commissioner to decide what are the questions of law which arise, *1929 All 819* Rel. (*Niamatullah & Bennet JJ*) R. B. SETH BIRADHMAL LODHA v. INCOME TAX COMMISSIONER, AJMER

A I R 1934 All 217=56 A. 504=1 A L J. 1213=153 I. C

INJUNCTION

——**Form**—*Definite directions necessary*

An injunction is something actually granted i e an order to do something or to refrain from doing something (c f C P C Append x D—Form 14 16) (*Murphy J. C*) LAL CHAND v GHISU LAL.

3 J 28

INSOLVENCY ACT

See Provincial Insolvency Act

INTEREST

Also see C P C—S 34
O 20 R 11,
O 34, R. 3

Contract Act—SS 23 & 74

——**When to be allowed**—*At what rate*

See Notification by J C

2 J 57 (G S)

—**Detention**—*Not payable by agreement or statute—Mere detention of money no ground for awarding it*

When interest is not payable by agreement or under statute the mere detention by the defendant of money due to the plaintiff is not a ground for awarding it There must be something in addition such as fraud or breach of trust **5 A M L J* 2 (*II*) Not Foll **6 A M L J 1, 50 Mad 94, 53 Mad 549, 50 All 818,*

INTEREST (*Contd*)

55 All 161 12 P 16 1933 Lah 212 Foll (*Norman J. C*) MANGI LAL v BASANTI RAM

1934 J. 1

——**Detention of Money**—*Not to be allowed for mere*

The mere detention of money in the absence of such circumstances as fraud or breach of trust is not a ground for awarding interest *1934 A. M. L J. 1,* Followed (*Weston J C*) CHUNNI LAL v SHEO PRASAD

***1934 J 143**

——**Detention of Money**—*Allowed only under agreement or statute*

Interest can only be awarded when there is an agreement—express or implied—or when it is payable under some law such as the Interest Act (*Norman J C*) KANHIYA LAL v HUNJA

***6 J 1.**

——**Detention**—*By way of damages may be awarded if plaintiff kept out of his money*

A plaintiff who has been kept out of his money and to that extent was unable to draw interest at the ordinary *bazar* rate by lending it to other people is entitled to be awarded interest by way of damages even though no specific evidence was led by him about it (*Macklin J. C*) BAL SINGH v RATAN LAL.

†*5 J 2 (II)

——**High rate**—*Court bound to allow—But it can reduce where it is penal or usurious*

INTEREST (Contd.)

(c) Though the court should allow the interest at the stipulated rate however high, yet it can reduce it in cases in which S 74 of the Contract Act or S 3 of the Usurious Loans Act applies (*Murphy J C*) BEHARI LAL v. BHEEON

3 J 5

——**Included in suit Khata**—*Court found Khata reliable—Unnecessary for plaintiff to lead evidence about interest*

Interest was included in the suit Khata Court held that the Khata was reliable *Held*, it was unnecessary for applicant to lead further evidence. (*Norman J C*) PHUL CHAND v HAR LAL.

*1935 J. 210

——**Mount Abu**—*Not applicable to Mount Abu*

Interest Act does not apply to Mount Abu (vide Notification No 284—I dated 24th April 1929—IV—Mac 75) (*Norman J. C.*) THE THIKANA KHILTI v PATI RAM GHISA RAM & CO

*1934 J 99

——**New case**—

In plaint, interest claimed by way of damages and mercantale usage not set up In cross examination, defendant admitted that interest was usually charged in sugar trade *Held*, plaintiff cannot be allowed to change his course of action (*Norman J. C.*) KISHAN LAL v. RAM DAYAL KHAJU LAL

*1934 J 26.

——**Rent**—*Suit for—Interest not to be awarded where no contract to pay interest*

INTERPRETATION OF STATUTE

Suit for recovery of arrears of rent Where no contract to pay interest, the mere fact that money is due from one party to another is not a ground for awarding interest (*Norman J C*) NAND RAM v. RAM BILAS

*1934 J 25

——**Stipulated rate**—*Must be allowed however high unless penal or usurious*

(a) When there is a stipulated rate of interest the court must allow it however high it may be (*Murphy J. C*) BEHARI LAL v. AHMED

1927 S 19

INTERPRETATION OF STATUTE

——*Words to be given ordinary meaning*

It is a sound principle of interpretation that words should be give their ordinary meaning unless to do so would make one part of Act inconsistent with another or would lead to absurdity. (*Norman J. C*) AMBA LAL v CROWN.

*1934 J 25

——*Give effect to apparent meaning Make one part consistent with another*

It is a recognised rule of construction that the provisions of a statute shall, if possible, be given a meaning which gives effect to the apparent intention of the legislature.

It is also a recognised rule of construction that the provisions of a statute should so far as possible be given a meaning which will make them consistent with one another, *1925 Cal. 203* **Relied upon.**

INTERPRETATION OF STATUTE (*Concld*)

(*Broomfield J C*) LAKSHMI NARAIN v LAL CHAND HARI SHANKER

5 J 30

——**Retrospective**—*Statute not retrospective unless intention expressed in statute itself*

Retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambigious language (*Norman J C*) F JETH MAL KUNDAN MAL v S BADRI LAL

***5 J 5**

HINDU LAW

——**Adoption**—*Factum valet—Doctrine applicable if adoption valid apart from lack of ceremonies*

(*e*) The doctrsne of *factum valet* applies to an adoption only when the adoption was valid apart from the lack of observance of a ceremonial necessity (*Murphy J C*) DHANNA LAL v RATAN LAL

1927 S 42

——**Adoption**—*Jains—Widow has same power as her husband*

(*b*) Amongst Jains a sonless widow has the same power of adoption as her husband would have had if he had chosen to exercise it neither his sanction nor that of any other person is necessary, *8 A 319, 17 C 518* and 30 *All* 197 **Foll** (*Murphy J C*) DHANNA LAL v RATAN LAL

1927 S 42

HINDU LAW (*Contd*)

——**Adoption**—*Jains—No age limit*

(*c*) Among Jains a person can be adopted till 32 and probably there is no limit of age ((*Murphy J C*) DHANNA LAL v RATAN LAL

1927 S 42

——**Adoption**—*Jains—No ceremonial necessary*

(*d*) It also seems likely that among Jains as is the settled rule in the Punjab no adoption ceremonial whatever is required the transaction being purely a matter of Civil contract but there is no decided case on this point for Ajmer Merwara (*Murphy J. C*) DHANNA LAL v RATAN LAL

1927 S 42

——**Adoption**—*Jains—Orphan cannot be adopted*

(*f*) The rule of Hindu law that an orphan cannot be adopted is in the absence of custom universal and applies to Jains and Hindus alike (*Murphy J C*) DHANNA LAL v. RATAN LAL

1927 S 42

——**Alienation**—*Manager—Necessity—Alienee must prove necessity or bona fide inquiry as to legal necessity*

A person who claims title under an alienation from a guardian of an infant must prove that there is legal necessity for it that is such pressure on the estate at the time the loan was taken or the alienation made as justified the act of the guardian he can also protect himself by proof of bona fide inquiry and if the fact of such inquiry is established the real existence of an alleged sufficient and reaso

HINDU LAW (*Contd.*)

ally established necessity is not a condition precedent to the validity of his title 20 *C. L. J.* 23 **Foll** (*Weston J C*) PREM SUKH v. BANSI DHAR

1935 J 24

——**Alienation**—*Co-parceners or Father—When can alienate his undivided interest*

(*b*) According to the interpretation of the Mitakshara in the United Provinces a co-parcener cannot alienate even his own undivided interest without the consent of the other co-parceners except for legal necessity or in the case of a father for payment of an antecedent debt 44 *I. A.* 126 and 31 *A.* 507 **Foll** The rule in Bombay and Madras is different 44 *B.* 141, 43 *B.* 472 and 25 *M.* 623 **Ref** There is no settled rule in Ajmer Merwara and consequently the strict interpretation adopted by the Allahabad High Court must be followed here (*Jolly J C*) LACHMI NARAIN v. RAM CHANDER

4 J 22.

——**Business**—*Opened by a co-parcener (not the father)—No presumption of jointness*

Whatever presumption may exist in the case of businesses opened by the father as Manager of a joint family no presumption exists of jointness when a business is opened by any co-parcener or by a Manager not the father (*Weston J C*) INDER CHAND v. SAHIB CHAND SAHAS MAL

1935 J 104

——**Custom**——*Jains*——*Ordinary law applicable to jains in absence of special custom*

HINDU LAW (*Contd.*)

(*a*) The general rule among Jains is that in the absence of a custom to the contrary the rules of Hindu Law apply to them in matter of inheritance and adoption 16 *Bom* 347 and 22 *Bom* 416 **Rel** (*Murphy J C*) DHANNA LAL v. RATAN LAL

1927 S 42

—— **Debts**—*Antecedent—Meaning*

(*b*) An antecedent debt means a debt antecedent in fact as well as in time that is to say that the debt must be truly independent and not part of the transaction impeached A borrowing made on the occasion of the grant of a mortgage is not an antecedent debt, 39 *All* 437 **Foll** (*Baker J C*) S GULAB CHAND v. MUKAND BEHARI LAL

1925 S 45

——**Debts**– *Creditor deprived of mortgage security—He can pursue personal remedy when whole family estate liable unless sons prove illegality or immorality*

(*c*) When the creditor is deprived of his security of the mortgaged property he might pursue his personal remedy for the debt subject to limitation and in execution thereof the whole family estate is liable for its payment unless the sons prove that the debt was contracted for illegal or immoral purpose 46 *A.* 95 **Foll.** (*Jolly J C*) LACHMI NARAIN v. RAM CHANDER

4 J 22

——**Debts**——*Mortgagee obtains decree against father—Suit by sons that mortgage invalid—Burden of proof on mortgagee to prove legal necessity*

HINDU LAW (*Contd*)

(*d*) Even when the mortgagee has obtained a decree against the father of a joint family still in the sons suit for a declaration that the mortgage was invalid the burden is on the mortgagee to prove legal necessity or an antecedent debt, *51 A 156* **Rel** (*Jolly J C*) LACHMI NARAIN v RAM CHANDRI

4 J 22

——**Debts** —*Joint family—Mortgage to pay antecedent debts—Binding on sons*

In the case of a mortgage sons and grand sons are bound to pay off if the mortgage deed was executed to pay off antecedent debts *1924 P C. 50* **Foll** (*Murphy J C*) HIRA LAL v MADHO LAL

2 J 69

——**Debts**—*Son s pious obligation—Limitation six years*

(c) Limitation for a suit based on pious obligation of a son to pay is 6 years under article 120 of the Limitation Act and limitation runs from the death of the father *16 Mad 99* and *8 M L J. 64* **Rel.** (*Baker J C*) S GULAB CHAND v MUKAND BEHARI LAL

1925 S 45

——**Guardian**—*Minor only bound when contract to his benefit*

To make a minor liable on a bond executed by his guardian it must be shown that the bond was for his benefit (*Norman J. C*) CHANDAN MAL v. JETHA

1934 J 68

——**Joint family**—*Two sources of income, e g Joint family property and private—No presumption that any purchase was made from the former source*

HINDU LAW—(*Concluded*)

If a man has two sources of income one from joint family property and the other private there is no presumption that any purchase was made from the former souce (*Norman J C*) FARNCIS v VISHNU LAL

1936 J. 71

—**Manager's Power to sue**—*Karta can sue alone on contract made by him alone—but he should state this in plaint*

The Karta of a joint Hindu family can sue alone as such on contract made by him alone He should state in the plaint that he was suing as Karta of the joint family *33 A 272,* **Foll** *4 A M L J 77* **Dist** (*Norman J C*) PHOOL CHAND v JAGAN NATH

1936 J 16

——**Stridhan**—*Ornaments—No presumption*

There is no presumption that ornaments are Stridhan On the contrary in the absence of any evidence the presumption would be that the ornaments formed part of the estate of the deceased husband or father (*Jolly J C*) MST KISTURI v KESARI MAL.

***3 J 2.**

——**Succession**—*Sapinda—Nearer excludes Remote*

The ordinary rule under the Mitakshara is that the nearer sapinda excludes the remote A nephew will succeed to the whole of the property excluding grand nephew altogether *50 A. 904* **Foll.** (*Jolly J C.*) JAI NARAIN v KISHEN CHANDER

***5 J. 1 (I).**

JAIL MANUAL

——Para. 810—*Conditions for release of convicts before expiry of their sentence*

See, Notification by C. C.

9 J 17 (J S)

JAINS

Also see, Hindu Law under appropriate headings.

——Hindu Law—*Ordinary Hindu Law applicable in absence of special custom*

(a) The General rule among Jains is that in the absence of a custom to the contrary the rules of Hindu Law apply to them in the matter of inheritance and adoption 16 *B* 347 and 2 *B* 416 **Rel** (*Murphy J C*) DHANNA LAL v. RATAN LAL.

1927 S 42

JUDGMENT

Also see, C P C O 20
Practice Judgment
Cr P C S 307

——*In Civil Second Appeal No 56 of 1928*—*Meaning of*

The Judicial Commissioner's judgment in Civil Second appeal No 56 of 1928 (Shamlat Committee, Thok Malwan of Ajmer v. The Malies of Ajmer) determines nothing more than that Gaoshumari which is equivalent to ginti, and Tholri could not be levied without proof of consideration, i e, it must be proved that the party sought to be made liable had actually grazed his cattle on and used forest produce from Shamlat land (*Norman J. C*) CHANDER v. DHOOI SINGH

5 J 3 (III)

JURISDICTION

See, C P C S 20
Practice Jurisdiction
Criminal Trial Jurisdiction

KHATA

See Debtor and Creditor

KHATA BAQI

See Limitation Act S 19

LAND ACQUISITION ACT (I OF 1894).

——S. 23—*Measure of value*

(1) In land acquisition cases the ordinary principle is that the prevailing market rate for building sites in the vicinity should be awarded with an increase or decrease according to the advantages or drawbacks of the land acquired from the point of view of the purpose for which it can be used to the best advantage

(2) When a plot to be acquired has changed hands shortly before the acquisition, it is evident that the price then paid is a very good index of its value in the absence of special circumstances

(3) It cannot be assumed as a general rule that sales from widows are usually at a ruinous rate for the widows (*Murphy J C*) ABDUL RAHMAN v. THE COLLECTOR OF AJMER-MERWARA.

1925

LANDLORD AND TENANT.

Also see, Transfer of Property Act—SS 106—116.

——**Lease for fixed period**—*Tenant continuing in possession on same terms after expiry cannot claim adverse possession*

(c) Where, after the expiry of the period fixed in a lease, the tenant continues in possession as tenant on same terms expressed in the lease, he cannot claim adverse possession and the lessor can recover the property back *(Lords Tomlin, Russell and Sir Lancelot Sanderson)* CHANDRIKA PRASADA v B B. & C. I Ry.

A I R 1935 P C 59=1935 O. W. N. 379=1935 A. W R. 459=1935 R. D. 165 =1935 All. L R. 345=61 C L. J 147=39 C W N. 552=68 M. L. J. 552=41 M. L W 617=1935 M. W. N. 434=1935 O L. R 249=154 I C. 945=37 B. L R. 390 =37 P L. R. 331=16 U. D. 221=16 L. R. A (Rev.) 250

——**Occupant**—*Person in possession for long without any agreement for rent—Subsequently rent demanded—Suit for rent lies only from date of demand*

(c) Rent as opposed to compensation for use and occupation can only be claimed for such lands by the Shamlat from the date of notice of demand and not for a period prior to it. *(Jolly J. C)* PAHLAD v. BALA PERSHAD.

4 J 61.

——**Qabuliyat**—*With transfer of possession—Can form basis of rent suit*

A qabuliyat signed by the tenant amounts to an agreement to lease and coupled with transfer of possession gives a cause of action for a rent suit. *(Norman J. C.)* BENI GOPAL v. ABDUL RAHMAN.

6 J. 43

LANDLORD AND TENANT—*(Concluded)*

——**Suit for rent**—*Damages for use and occupation cannot be awarded*

In a suit for rent, damages for use and occupation should not be granted unless there is an alternative plea or the plaint is amended, *21 W R. 208, 22 C. 752, 1928 Nag. 27* **Foll** *31 All. 276* **Dist.** *(Norman J. C)* G GOULD v. JATAN LAL.

5 J. 100.

——**Tenant in possession**—*Cannot deny lessor's title.*

(*b*) Tenant cannot dispute his lessors' title so long as he remains in possession under an agreement which he has made with them. *(Lords Tomlin, Russell and Sir Lancelot Sanerson).* CHANDRIKA PRASADA v. B. B & C. I. Ry.

A. I. R. 1935 P. C. 59=1935 O W. N. 379=1935 A. W. R. 459=1935 R. D 165=1935 All. L R. 345=61 C. L. J. 147=39 C. W. N. 552=68 M L. J. 552=41 M L. W. 617=1935 M. W. N. 434=1935 O L. R. 249=154 I. C 945=37 B L. R. 390=37 P. L R. 331=16 U. D 221=16 L. R. A (Rev) 250.

LAW REPORTS ACT (XVIII OF 1875)

——**S. 3**

See, J. C's Notification.

1934 J 1 (N. S.)

LEGAL PRACTITIONER.

——**Enrolment Rules**

See, Notification by J C.
1934 J 7 (N S)

Superseded Rules
2 J 63 (G S)
2 J. 17 (N S)

——**Fees**—*In cases heard by Judicial Commissioner*

See, Notification by J C.
1934 J 3 (N S.)

——**Pleader**—*Perusal of Stamp*

See Notification by J C
1934 J 4 (N S)

——*Relation of Presiding officer—Should seldom if ever appear before him*

See, Notification by Commissioner and D J.
2 J. 12 (G S.)

——**Touts**—*If legal Practitioner take cases from—Their certificate will be recalled at once.*

See, Notification by Commissioner and District Judge
2 J 12 (G S)

LEGAL PRACTITIONERS ACT (XVIII OF 1879)

——**S 4 and S 41**—*Extended to Ajmer-Merwara*

See, Chief Commissioner's Notification
2 J 21 (N. S.)

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*Concluded.*

——**S 41**—*Enrolment Rules.*

See Judicial Commissioner's order
1934 J. 7 (N S)

Superseded Rules at
2 J. 63 (G S)
2 J 17 (N, S)

LIBEL.

See, Tort —Libel

LIMITATION

——**Amendment**—*No retrospective effect*

See Practice—New Law.

——**Amendment**—*Limitation changed during suit—New Law governs appeal*

See Practice—New Law

——**Res Judicata**

See C P C.—S 11—Limitation.

——**Revision**—*On ground of wrong decision of Law*

See C P C —S 115—Error of Law

——**Revision**—*Limitation for filing Revision application fixed at three months*

See C P. C —S 115—Limitation

——**Criminal Revision**—*Before Sessions Judge—To be filed within three months*

See, Notification by A D J.
1936 J 1 (N.

LIMITATION—(*Concluded*)

——*Time extended for payment of deficit, suo motu by court—Payment made after expiry of Limitation—Respondent not precluded from urging at hearing that appeal is time barred*

Where the court of its own motion directs deficient court fees to be made up and court fee is made up after the period of limitation has expired it is still open to the other side to plead that the appeal is time barred The hearing of the appeal is proper time to urge this objection, *5 A M L J 83* and *C S A 4 of 1929* **Foll** *1932 M 82* **Diss** (*Norman J C*) HIRA LAL v HAZARI MAL JETH MAL

6 J. 16.

LIMITATION ACT (IX OF 1908)

——**S 3**—*Starting point is date of institution and not restoration*

A suit is dismissed for default and then restored Limitation is to take effect from the date when the suit was filed and not from the date of restoration (*Weston J C*) MOHAMMED HANIF v SYED HABIB HUSAIN

1934 J 111

——**S 5**

Clerical Error

Ex-Parte Decree—Setting aside

Review—Pendency of

Clerical Error.

——**S 5**—*Clerical error relating to date of preparation of copy—Counsel misled—Delay condoned*

LIMITATION ACT (1908), S 5

If the counsel of the plaintiff has been misled by a clerical error of the copyist relating to the date of the preparing of copies, the delay can be excused (*Broomfield J C*) MADHO LAL v M BINODI LAL.

3 J 41

Ex Parte Decree—Setting aside

——**S 5**—*Period of 30 Days for setting exparte decree cannot be extended*

Section 5 of the Limitation Act does not apply in Ajmer Merwara to an application made for setting aside ex parte decree and the Courts have no power to enlarge the time of 30 days fixed by Act 164 of that Act (*Murphy J C*) GEELA v SUKHDEO

1927 S 23

Pendency of Review

——**S 5**—*Pendency of Review application good ground if prosecuted with proper diligence*

A review application may be good ground for extending limitation but clearly it can be a good ground only when it has been prosecuted with proper diligence (*Weston J C*) KANHIYA LAL v MST PHULAN

1935 J 22.

——**S 5**—*Review good grounds*

Review application if bonafide, is good ground of excusing limitation (*Norman J C*) MOHAN LAL v KHEM CHAND

1934 J 30

——**S 5**—*Review—Time taken in bona fide Review Proceedings may be excluded*

Time taken up in prosecuting bona fide proceedings in review is sufficient ground for condoning delay in filing appeal. *15 C 91* and *49 B. 149* Foll Appellant is not entitled as of right to exclude such period when the application for review was merely frivolous or designed to gain time. The ultimate failure or success of an application for review can not be regarded as any criterion of the bona fides of the application (*Jolly J. C.*) PITHRI LAL v. F SOBHA RAM SRI RAM

•5 J 1 (I).

——S 5—*Time spent in prosecuting bona fide review—To be excluded—If notice issued Review is bonafide*.

(*a*) The time spent in prosecuting with due diligence a bonafide and proper application for review should be deducted and the appeal ought to be admitted, *15 C 91 P. C. and 1927 Bom. 221* Foll

(*b*) If the court issues a notice to the other side it is a sufficient test of the bona fide nature of the review application. (*Broomfield J. C*) BAKSHI RAM v. KUNDAN MAL.

3 J. 57.

——S. 6 and 8—*S. 8 governs S. 6*

(*c*) Section 8 of the Limitation Act governs S. 6 and though in case of minors, possession of the alienee from other co-sharers becomes adverse from the date of his possession the minor can file a suit within 3 years of his attaining majority for setting aside the alienation but not afterwards. (*Murphy J C.*) M. RAFI UDDIN v. KARIM BUX.

1927 S. 37.

——S. 12—*Application for reference under S 17 of Ajmer Court's Regulation (I of 1877)—Time spent in taking copies to be excluded*

(2) Limitation for such an aplication is to be computed, after excluding time taken up in obtaining copy of judgment. (*Jolly J C*) ABDUL QADER KHAN v ABDUL RAOOF.

4 J. 92

——S 13 -*Defendant resident of Indian State—Presumption that he lived out of British India—Little evidence sufficient*

(*a*) In the case of a defendant who is a resident of Native State the natural presumption is that he has spent his time outside British India and very little evidence on the part of a plaintiff will suffice to obtain the benefit of S 13 of the Limitation Act. (*Murphy J C.*) BALA RAM v. FIRM MOOL CHAND RAM NARAIN.

1927 S. 50

——S. 14—*Court returned plaint on ground that suit not cognisable by it—Plaintiff entitled to exclude the time taken in determining that it had no jurisdiction*

A plaint was filed in the Court of Small causes which ordered that the plaint be returned on the gronnd that the suit was not cognizable by it. It was then filed in the court of Subordinate Judge *Held*, plaintiff is entitled to exclude the time occupied by the Small Cause Court, in determining whether or not it had jurisdiction, *70 I C. 613*, Foll (*Weston J. C.*) MOHAMMED HANIF v. SYED HABIB HUSAIN.

1934 J.

LIMITATION ACT (1908), S 14.

——S 14—*Revision filed after District Court's finding that no appeal lay—Party entitled to exclusion of time*

Applicant came in Revision only after the District Court s finding that the order is not appealable In the circumstances applicant is entitled under S 14 of the Limitation Act to exclude the time spent in prosecuting the appeal and the revision application is within time (*Weston J C*) BISHEN LAL v SRI NARAIN

1935 J 117

——S 15 (2)—*Notice of claim under S 77 of the Railways Act is not notice of suit*

S 77 of the Railways Act does not prescribe any such notice (as is required by S 15 (2) of the Limitation Act) It only contemplates a submission of claim The period of such a submission cannot therefore be excluded within the meaning of S 15 (2) of the Limitation Act *70 I. C 109* **Not Foll** (*Mallin J C*) B B & C I Ry v F. LAXMI NARAIN CHAND MAL

5 J 53

——S 18—*Scope of*

Fraud under S 18 of Limitation Act cannot have a different meaning from fraud in S 415 of Indian Penal Code (*Norman J C*) CHANDAN MAI MOHAN LAL v BHOLA RAM PHOOL CHAND

1934 J 79

——S 19

Khata Baqi

Baqi Dena Raha

Joint Hindu Family

Without Prejudice

LIMITATION ACT (1908), S 19

Khata Baqi

——S 19—*Suit cannot be based on mere acknowledgment*

A mere acknowledgment of an older debt without a promise to pay, cannot be made the basis of suit, *1 A M L J 16, 22 B* 513, 52 *B* 513 52 *B* 521 & 56 *A* 281 **Foll** 1926 *A M L J Supplement* 4, 1926 *A M L J Supplement* 29, 5 *A M L J* 51 & 46 *B* 24, **Not Followed** 3 *C* 1047 **Not applicable**

A distinction should, however, be drawn between an acknowledgment which contains an express promise to pay and one from which a promise to pay can be inferred (*Weston J C*) NARSINGH DAS v RAM KANWAR.

1935 J 14

——S 19—*Acknowledgment can save limitation—But not furnish cause of action*

Acknowledgment in writing may serve to save limitation but cannot exempt a plaintiff from proving his *cause of action* (*Murphy J C*) CHARLES HENRAY CODD v MANGI LAL

1 J 16

[——S 19—*Khata Baqi—Acknowledgments—Amounts to promissory note*

(1) A suit based on a Khata Baqi containing an acknowledgment by the debtor is tantamount to suit on a promissory note, *C I* 75 *of* 1926 **Foll**

. Such a suit is governed by the provisions of S 45 of the Contract Act under which all joint promisees have the

right to claim performance of the promise (Macl... J C) DHAN RAJ v KALU

*5 J 51

[——S 19 *Khata Baqi Acknowledgment—Is a promise to pay It can form basis of suit*

(a) A khata baqi is a promise to pay and can form the basis of a suit 33 Cal 1407 I C and 46 Bom 24 Rel 89 I C 402 Dist (Barlee J C) RAM CHANDRA v SHEO NATH

†1926 S 29

S 19 *Khata Baqi—Acknowledgment—Can form basis of suit*

(b) An acknowledgment can form the basis of the suit 33 *Cal* 1407 and 46 *Bom* 24 **Rel** (*Baker J C*) MUKNA v BANNA

†1926 S 4

Baqi Dena Raha

——S 25—*Baqi dena raha —Amounts to mere acknowledgment and not promise to pay*

The word dena does not convert an acknowledgment into an express promise to pay 21 M 4) **Ref** (*Norman J C*) MST IMARTI v CHAMLA LAL

1936 J 180

Joint Hindu Family

——S 19—*Debt to a Joint Hindu Family business—Member's position similar to partners of a firm*

Members of a Joint Hindu Family carrying on a family business are in the position of partners as regards acknowledg

ment by one member of the family of a debt due by the family business and can be availed by the creditor against the family as a whole (*Jolly J C*) FIRM JETH MAL KISHEN LAL v MANGI LAL

*3 J 7.

Without Prejudice

——S 19—*Offer qualified with without Prejudice —It is acknowledgment*

The words without prejudice have no meaning and an offer though qualified by these words does amount to an acknowledgment of liability within the meaning of the Limitation Act and saves limitation (*Murphy J C*) B B & C I Ry v MESSRS RATI RAM GHEESA RAM

1927 S 13

——S 20—*Creditor can appropriate at any time*

A creditor is not bound to make his appropriation as soon as the money is paid but can do it at any time An appropriation made in the plaint towards principal can save Limitation 55 *A* 632 **Dist** (*Norman J C*) DURGA LAL v KANHAIYA LAL

1936 J 34

——S 20—*Entries on behalf of illiterate person must be signed by the person writing on his behalf*

Entries said to have been made on behalf of an illiterate person must at least be signed by the person writing on his behalf (*Weston J C*) NATHU v SARWAN

1935 J 45

——S 20—*Plaintiff must aver payment—Also acknowledgment in w*

Under Section 20 of the Limitation Act it is necessary for the plaintiff to aver not only that payment was made but also that it was acknowledged in writing (*Norman J C*) SANWAL RAM v GANDL LAL

*5 J 1 (III)

——S 20—*Acknowledgment after suit—Does not save limitation*

An acknowledgment need not be contemporaneous with the payment but if made after the suit has begun it cannot save limitation (*Norman J C*) SANWAL RAM v GANDE LAL

*5 J 1 (III)

——S 20—*Payment by money order—Saves limitation—Date of payment is date of receipt and not date of despatch*

(*a*) When a payment is made by money order the date of receipt and not the date of despatch is the date of payment

(*b*) Payment by money order saves limitation under S 20 of the Limitation Act because the presumption is that the M O form bears the remitter s signature as required by the Post Office (*Murphy J C*) SHEO NATH MOHAN LAL v MANNA LAL LAKHMI CHAND

1927 S 25

——S 20 and S 21 (2)—*Payment by one co debtor—Whether extends period against the other*

A payment by one co debtor cannot operate to extend the period of limitation under S 20 as against a joint co debtor unless the payment be shown to have been made on behalf of the latter. The provisions of Section 20 must be read subject to the provision of section 21 (2) Limitation Act, *14 C 978* Foll (*Jolly J C*) TOTA RAM v RAM SWARUP

*4 J. 1

——Art. 7 or 102—*Washerman—Not artisan or labourer*

A *dhobi* is not an artisan or a labourer and a suit by him for services rendered is governed by Art 102 and not Art 7. In absence of agreement a dhobi is entitled to reasonable remuneration for his services (*Norman J C*) TAJAMAL HUSAIN v MD BUX

*6 J 1.

——Art 10—*No steps towards pre emption for one year—Suit against pre emptor becomes barred*

(*c*) When no steps whatsoever towards pre emption have been taken within a year from the date of the sale such a suit against a rival claimant is barred by time after one year (*Jolly J. C*) MASJID CHIRAGCHIYAN v S HIRA CHAND

4 J 15

——Art 10 and Art 120—*Suits by rival claimants for pre emption—Article 120 applies*

A suit against a rival claimant is not a suit for pre emption but for substitution on the ground of a preferential right to pre empt and is not governed by Art 10 of the Limitation Act Article 120 applies to such a suit (*Jolly J. C*) MASJID CHIRAGCHIYAN v S HIRA CHAND

4 J 15.

——**Art 11-A**—*Any suit brought to get rid of an order under R. 101 whatever its form must be brought within one year*

(2) The effect of Rule 103 of O 21 Civil Procedure Code read with Article 11 of the Limitation Act is that an order passed under R 101, can be set aside only by a suit brought within one year. Any suit brought to get rid of the effect of an order under R 101 whatever its form, whether for declaration or ejectment based upon superior title, must be brought under R 103 55 B 668 Foll *1926 Cal* 377 Dist (*Macklin J C*) CHATUR BHUJ v RAM KISHUN DASS

5 J 61

——**Art. 22**—*'Injury to the person includes assult or criminal force*

Injury to the person is a wider expression than bodily injury. The expression injury to the person in Article 22 includes any act which would constitute the offence of asault or using criminal force (*Norman J C*) BABU RAM v THAKUR PRASAD, MR

1936 J 143

——**Art 74**—*When there is no default clause limitation runs from the date when instalments fall due*

A bond contained no default clause making the whole amount due on default of one or more instalments

Held, Plaintiff in fact was suing on a series of causes of action which had arisen when the instalments fell due and that the instalments which fell due within

three years of the date of filing of suit were not barred by limitation (*Weston J C*) NATHU v SALWAN.

1935 J. 45

——**Art 75**—*Default makes the whole amount payable on the date of default*

Where the money borrowed was payable in instalments and it was provided that upon default for payment of three instalments the whole amount of the loan should be payable at once, the third default made the whole amount payable on the date of default. Defendant was not entitled to revert to the original agreement as to instalments either for purposes of pleading that amounts were not due or for purposes of limitation. (*Weston J C*) MOTI v POOSA

1934 J 109

——**Art 75**—*Bond payable by instalments—Limitation runs from default*

When a bond is payable by instalments the ordinary rule is that limitation runs from default. Limitation is to be decided on the claim as set out in the plaint and not on a claim which might have been made (*Norman J C*) ABDUL GHANI v AKBUR KHAN

6 J 41

——**Art 75**—*Limitation runs from date of default*

(*b*) Limitation for the whole sum recoverable runs from the date of default (*Murphy J C*) JHUNTA LAL v SUA LAL.

1925 S 57.

——**Art 85**—*Essentials*

Under Section 20 of the Limitation Act it is necessary for the plaintiff to aver not only that payment was made but also that it was acknowledged in writing (*Norman J C*) SANWAL RAM v GANDE LAL

*5 J 1 (III)

——S 20—*Acknowledgment after suit—Does not save limitation*

An acknowledgment need not be contemporaneous with the payment but if made after the suit has begun it cannot save limitation (*Norman J C*) SANWAL RAM v GANDI LAL

*5 J 1 (III)

——S 20—*Payment by money order—Saves limitation—Date of payment is date of receipt and not date of despatch*

(*a*) When a payment is made by money order the date of receipt and not the date of despatch is the date of payment

(*b*) Payment by money order saves limitation under S 20 of the Limitation Act because the presumption is that the M O form bears the remitter's signature as required by the Post Office (*Murphy J C*) SHEO NATH MOHAN LAL v MANNA LAL LAKHMI CHAND

1927 S 25

——S 20 and S 21 (2)—*Payment by one co debtor—Whether extends period against the other*

A payment by one co debtor cannot operate to extend the period of limitation under S 20 as against a joint co debtor unless the payment be shown to have been made on behalf of the latter The provisions of Section 20 must be read subject to the provision of section 21 (2) Limitation Act *14 C 978* Foll (*Jolly J C*) TOTA RAM v RAM SWARUP

*4 J. 1

——Art 7 or 102—*Washerman—Not artisan or labourer*

A *dhobi* is not an artisan or a labourer and a suit by him for services rendered is governed by Art 102 and not Art 7 In absence of agreement a dhobi is entitled to reasonable remuneration for his services (*Norman J C*) TAJAMAL HUSAIN v MD BUX

*6 J 1.

——Art 10—*No steps towards pre emption for one year—Suit against pre emptor becomes barred*

(*c*) When no steps whatsoever towards pre emption have been taken within a year from the date of the sale such a suit against a rival claimant is barred by time after one year (*Jolly J C*) MASJID CHIRAGCHIYAN v S HIRA CHAND

4 J 15

——Art 10 and Art 120—*Suits by rival claimants for pre emption—Article 120 applies*

A suit against a rival claimant is not a suit for pre emption but for substitution on the ground of a preferential right to pre empt and is not governed by Art 10 of the Limitation Act Article 120 applies to such a suit (*Jolly J. C*) MASJID CHIRAGCHIYAN v S HIRA CHAND

4 J 15

LIMITATION ACT (1908), ART 144

——Art 144—*Property lost by auction sale—But regained after 12 years—No fresh starting point*

A property, fourteen years after the loss by auction sale, came again into the hands of the representative in interest of the persons who had been allowed to use it as part of the mortgage security

Held, that it cannot form a fresh starting point of limitation and the suit is barred (*Murphy J C*) CHAGAN LAL v. BIJEY NARAIN

2 J 77

——Art 144 & Art 148—*Alienee of equity of redemption from co mortgagor—Suit by one co mortgagor governed by Art. 144*

(*d*) When property is already mortgaged the position of an alienee who has purchased enquity of redemption from some of the co sharers or co mortgagors is not that of a mortgagee and a suit by a co sharer or co mortgagor who did not join the alienation is governed by Art 144 and not Art 148 of the Limitation Act (*Murphy J C*) M RAFI UDDIN v KARIM BUX

1927 S 37

——Art 168—*Not applicable—Where no notice of hearing*

When the appellant had no notice of the hearing he can have resort to S 151 because O 41, R 19 read with article 161 of the Limitation Act pre supposes the proper service of summons on the appellant, *45 B 648* and *11 R 26* Foll (*Norman J. C*) MATHRA DAS v KALYAN MAL.

*6 J 7

LIMITATION ACT (1908), ART. 182

——Art 181—*Not applicable to municipal dues*

Article 181 of the Limitation Act applies only to application under the Civil Procedure Code and not to application for recovery of Municipal dues, *7 B 213, 22 C 929 51 C 672, 60 I C 123* Foll (*Norman J C*) CROWN v AMBA LAL

5 J 92.

——Art 182—*Execution application bound to be infructuous on account of a statutory bar—It is not in accordance with law*

Decree holder died leaving a will naming C as executor C, as executor, applied for execution As C had not obtained probate he agreed to have the application struck off Thereafter he applied for probate but his application was rejected on the finding that the will was a forgery. The heir of the decree holder subsequently applied for execution *Held*, as probate was not and could not be produced the darkhast was bound to be infructuous and so was not in accordance with law (*Norman J C*) QUTUB UDDIN v SOBHAG MAL

*1936 J 211

——Art 182 (5)—*Excess amount claimed in Execution application—No material defect—Application is in accordance with law*

An excess claim was made in the Execution application for principal as well as interest *Held* it was not a material defect, *13 A 550* Foll *1928 Mad 110* Ref. (*Norman J. C*) RAM DUTT v CHATUR BHUJ.

1936 J 110

LIMITATION ACT (1908) ART 182

——Art 182—*Execution Application returned for correction—Return no proof that defect was material*

Return of *darkhast* for correction is no proof that the defect to be corrected is a material and not a minor defect (*Norman J C*) RAM DUTT v CHATUR BHUJ

1936 J 110

LUNACY ACT (IV OF 1912)

——S 65—*Appointment of manager—Only after inquisition—Medical certificate not necessary*

Only after a lunatic has been so found by inquisition in the prescribed manner has the court jurisdiction to proceed to consider the appointment of a manager A medical certificate is not enough (*Jolly J C*) MST CHANDA v MOOL CHAND

3 J 5

MALICIOUS PROSECUTION

See, Tort Malicious Presecution

MASTER AND SERVANT

——Liability of master—*Negligence of servant—Servant acting against express directions of master—Still master is liable*

In a suit for damages against the master on account of the negligence of his servant it is not a good defence that the servant acted against the express directions of the master. (*Norman J C*) MOHAMMED NOOR KHAN v HAMIR MAL.

1936 J 100

MOHOMMEDAN LAW.

——Alienation—*Father's power of alienation on behalf of minor son—Alienation not binding on minor if not for legal necessity*

Father's power to mortgage on behalf of his minor son is a limited right. A mortgage which is not for legal necessity of the minor son is not binding on him. (*Weston J C*) ABDUL GAFFAR v. MOHAMED SHAFI.

1935 J. 107

——Gift—*Whether registration necessary*

Though an instrument is not necessary for the validity of a Mohammedan gift, yet if there is an instrument it must be registered, *1927 Cal 197* **Diss** (*Norman J C*) ABBAS ALI v AKBAR ALI

***1934 J 47**

——Hiba-bil-Ewaz—*Release by wife of her claim for dower good consideration*

The release by a wife of her claim for dower is a good consideration for hiba bil ewaz, *23 M. 70* and *7 L. 128* **Foll** (*Weston J C*) ABDUL GHAFFAR v MOHAMMED SHAFI

1935 J 107

——Legitimacy—*Woman married to a second man without being divorced by her first husband—Children by the second husband are illegitimate inspite of acknowledgment*

(*b*) All that can be effectively acknowledged is a matter of fact and no acknowledgment of a principle of law will be effective if the law is not what it is acknowledged to be A son of an undivorced woman by a second husband is illegitimate

MOHOMMEDAN LAW—(Contd.)

and no amount of acknowledgment by his father can possibly make him legitimate 15 A 32 Foll (Macl in J C) IBRAHIM KHAN v HAZRAT NOOR KHAN
5 J 48

—— **Marriage**—*Dissolution by Court—Incompatibility of temperament no ground*

A Court cannot grant dissolution of marriage on the ground of incompatibility of temperament against the husband's will (Norman J C) NOOR BIBI v MASITA
1936 J 61

——**Marriage**—*Second Marriage of an undivorced woman—Absolutely void*

(a) A marriage of an undivorced woman whose husband is alive is not merely invalid but absolutely void *1929 Lah 372* **Foll** (*Macllin J C*) IBRAHIM KHAN v HAZRAT NOOR KHAN
5 J 48

——**Pirzadas**—*Not recognised*

(1) The Pirzadas do not perform any duties and are not recognised by Mohammedan law as a class (*Murphy J C*) SYED ALI v THE DURGAH KHWAJA SAHIB
1927 S 15

——**Waqf**—*Dewan entitled to surplus income*

In accordance with general usage and practice the Dewan is entitled to the disposal of the whole of the surplus income after due provision had been made for the maintenance of the shrine and the performance of the necessary ceremonies etc. But this general right can only hold

MOHOMMEDAN LAW—(Concluded)

good in the absence of any evidence of usage to the contrary in respect of the particular shrine in question, *19 C 203* and *11 M 131 P C (?)* **Disc** (*Jolly J C*) DEWAN SYED ALEY RASUL ALI KHAN v ALTAF HUSSAIN
*4 J 3

MONEY ORDER

– **Payment by**

See Limitation Act—S 20

MORTGAGE

——*Mortgagee purchasing part of property Mortgage not necessarily discharged*

The effect of the purchase of a part of the mortgaged property by a mortgagee is not to discharge the mortgage without regard to the value of the portion purchased (*Murphy J C*) NANGAH v BADRI PERSHAD
1 J 18

——*Registered sub mortgage—No Notice—Absence of knowledge of the sub mortgage by the mortgagor—Payment to mortgagee extinguishes mortgage*

Registration of a sub mortgage is no notice to the Mortgagor consequently payment of the mortgage amount by the mortgagor to the mortgagee extinguishes the mortgage and the sub mortgagee has no remedy against the mortgaged property (*Jolly J C*) S PANNA LAL v S TIKAM CHAND
*3 J. 3

PARTNERSHIP ACT (IX OF 1932)

——**S 19 (2) (c)**—*Partner can assign a decree to a third person*

To assign a decree to a third person for what it will fetch is not a compromise or relinquishment but merely a sale of the firm's property (*Norman J C*) GULAB CHAND v RAM NIWAS

1936 J 79

——**S 46**—*Suit by one partner against another—Does not lie in respect of any transaction which forms an item of the partnership account*

The ordinary rule is that one partner cannot sue another in respect of any transaction which forms an item of the partnership account (*Norman J C*) CHAND MAL v FIRM BODU RAM PANNA LAL

***1936 J 214**

——**S. 47**—*Firm dissolved—Partner's authority continues for purposes of winding up the affairs of firm—He has authority to realise decretal amount*

A partner's authority continues after dissolution for purposes of winding up the affairs of the firm Realising what was due on a decree would come under winding up the affairs of the firm (*Norman J C*) GULAB CHAND v RAM NIWAS

1936 J 79

——**S 69 and S 74**—*Right to realise money accruing before Act—Right is unaffected—Procedure however is governed by Act*

Section 69 (2) would bar a suit by an unregistered firm on a cause of action arising prior to that section becoming law *1935 All 698* and *1935 Lah 893* **Foll.** (*Norman J. C*) LACHMI NARAIN v SHEO DAN MAL MOTI LAL

1936 J 20

PARTNERSHIP ACT (1932)—*concluded*

——**S 71 (2)**—*Rules*

See, Notification by C C

1936 J 2 (N S)

——**S. 74 and S 69**—*Right to realise money accruing before Act—Right is unaffected—Procedure however is governed by Act*

See Under S 69 above

PART PERFORMANCE

——*Doctorine of part performance cannot be invoked apart from S 53 of the Transfer of Property Act*

Agreement for sale of land Price paid Possession taken by vendee but sale deed not registered *Held*, that the plaintiff acquired no title and as the time within which he might have sued for specific performance has elapsed he could get no benefit from the contract *58 C 123* **Foll** SUA LAL v MUNICIPAL COMMITTEE BEAWAR

1936 J 145

——*Doctrine not applicable to gifts*

Doctrine of part performance does not apply to gifts *1928 Bom 260* **Foll** (*Norman J C*) MST GORAN v MOOL CHAND

***1936 J 213**

PARTY WALL.

——*No construction without consent of other*

The ordinary rule of law is that joint owners of a party wall may not make constructions without the consent to the other party (*Norman J C*) TEMPLE OF SRI RAM CHANDRAJI v. NATHI

1935 J 134

——*Presumption of jointness*

There is a presumption that a party wall is joint (*Norman J C*) TEMPLE OF SRI RAMCHANDRAJI v. NATHI

1936 J. 134

PENAL CODE XLV OF 1860

——**S 5 and S 71**—*Abetment under Salt Act—Can be punished under S 117 I P C—Special Act does not always override General Act*

(*b*) Whether an act is a separate offence or not under the Penal Code is immaterial by virtue of S 26 of the General Clauses Act and S 71 of the I P C it is not illegal to punish abetement of an offence under the Salt Act under S 117 of the I P C even if a punishment is provided by the Salt Act itself for such an offence The principle that the provisions of a Special Act override the provisions of a General Act has been accorded very considerable but not universal recognition and the provisions of S 5 of the I P C are to be read in a manner that would reconcile them with those of section 26 of the General Clauses Act The provisions of a General Act would have no application only when the provisions of a Special Act

PENAL CODE (1860), S 75.

are so drafted as to exclude the application of the General Act specifically or by necessary implication The use of the words within the meaning of the Indian Penal Code in S 9 (c) of the Salt Act does not specifically or by necessary implication exclude the application of the provisions of the I P C To make the provisions of S 26 of the General Clauses Act and S 71 of the I P C applicable it is not necessary that an act should be an offence both under the Special and the General Act (*Jolly J C*) CHAND KARAN SARDA, ADVOCATE *In R* CROWN v P SOHAN LAL

4 J 1

——**S 40 and S 109—117**—*Act abetted not offence under Penal Code—Still offence under Penal Code*

(*c*) The effect of the provisions of S 40 and S 109 117 of the Penal Code is that abetment of any offence is an offence under the Penal Code whether the act abetted is itself an offence under the Penal Code or not (*Jolly J C*) CHAND KARAN SARDA ADVOCATE, *In Re* CROWN v P SOHAN LAL

4 J 1.

— **S 71 and S 5**

See Penal Code—S 5

——**S 75** *Subsequent conviction for offence prior to the offence (in question)—Section has no application*

The theory underlying Section 75 is that when a man has been punished for an offence and then commits a similar offence it shows that the previous punishment was not enough A court ought not take into consideration sentences

after the offence (before the Court) even though the actual offences for which the sentences were imposed were prior to the offence (before the Court) (*Norman J C*) FAZAL ILLAHI v CROWN

1936 J 35

—S 84—*Abnormality is not insanity*

The criterion in the cases in which insanity is pleaded is whether the accused knew the nature of the act and that he was doing what was wrong or contrary to law. The accused may be abnormal but that is not sufficient in the eye of law (*Baker J C*) EDGAR MIDDLE COAT v. K E

2 J 14

—S 109-117 and S 40—*Act abetted not offence under Penal Code—Still offence under Penal Code*

See Penal Code—S 40 above

—S 117—*Offence under Salt Act—But not under Penal Code—Still Section 117 I P C applies*

(*a*) The punishment under S 117 I P C for abetment of an act which is an offence under the Salt Act and even though not an offence under the Penal Code is not illegal. S 9 of the Salt Act does not embrace all abetments but deals only with simple cases of abetment by individuals while S 117 I P C applies to serious cases of abetment by public at large (*Jolly J C*) CHAND KALAN SARDA, ADVOCATE, *in re* CROWN v P SOHAN LAL

4 J 1

—S 170—*Pretentions to hold an office and having authority there under sufficient*

Under colour of such office is a wide expression. If a man pretends to hold an office and also pretends to have certain authority thereunder he acts under the colour of such office even though the authority is as much a pretence as the office 27 A 291 **Foll** 15 I C 785 **Not Foll** (*Norman J C*) SHERA v CROWN

***1936 J 215**

—S 182 and S 211—*Information to Police followed by private complaint—Police challaned under S 182—Charge under S 182 should be quashed—Complaint should be dismissed under S 203 Cr P C or investigated further—If complaint turns out to be false proceed under S 211 Cr. P C after sanction under S 195 (1) (b) of Cr P C*

A complaint of rape was made to the Police

The Police held that the complaint was false and challaned the complainant under S 182 Indian Penal Code. Subsequently the complainant filed a complaint of rape before a competent Magistrate who sent it to the Police for enquiry. Upon receipt of the Police report the Magistrate ordered that the rape complaint be kept pending till the decision of the case against the complainant under S 182 Indian Penal Code

Held—(1) That the Magistrate's order was improper and could not be sustained. The Magistrate should either have dismissed the complaint under S 203 of the Cr P C or elected to investigate it further 5 All 397 **Foll**

PENAL CODE (1860), S. 182.

(2) That the proceedings under S. 182 I. P. C. should not only be stayed but quashed, as the offence of which the complainant would be guilty if her rape complaint turned out to be false would be one under *S. 211* and not *S. 182 I. P. C., 1925 Pat. 185, 1925 All. 472, 7 B. 181, 36 Cal. 857, 16 All. 906* **Rel.**

(3) That when an information to the Police is followed by a complaint to the court based on the same allegations and the same charge, the complaint of the court itself is necessary under section 195 (1) (b) of the Cr. P. C. before the court can take cognisance of an offence punishable under section 211 I. P. C. in respect of the false charge made to the police.

The fact that the complaint was not investigated by the court makes no difference, *1925 Pat. 183, 15 Cal. 1152* and *44 C. 650* **Rel.** (*Shannon J. C.*) MST. PARBI v. CROWN.

5 J. 41.

——S. 279—*Mere fast driving—No offence*

Mere fast driving does not constitute *an offence under S. 279. By standers,* estimates of speed are very unreliable. (*Norman J. C.*) DEBI SINGH v. CROWN.

1934 J. 51.

——S. 279—*Two persons riding on a cycle—Proof of rash and negligent driving necessary*

There can be no doubt that riding a bicycle falls within the meaning of driving a vehicle, but if two persons ride on the same bicycle they are not necessarily likely to cause hurt to other persons using the road. It must be established that in fact the bicycle was not or could not have been under proper control before any inference as to danger to other persons could arise. (*Weston J. C.*) SADIQ ALI v. CROWN.

1934 J. 122.

——S. 302—*Unsafe to convict on uncorroborated evidence of an eye witness, certain portions of whose evidence throw doubt on its truth*

It is highly unsafe to convict an accused of murder on the sole uncorroborated evidence of an eye witness in whose statement there are certain such portions as throw great doubt on its truth. (*Baker J. C.*) AKBAR KHAN v. CROWN.

2 J. 3.

——S. 304—*Provocation reduces murder to culpable homicide only when it is both grave and sudden*

Provocation reduces murder to culpable homicide only when it is both grave and sudden. (*Weston J. C.*) GULAB v. CROWN.

1934 J. 136.

——S. 304—*Cause and effect*

A healthy person is knocked senseless and dies very shortly after he receives injuries and suffers by no other violence during the interval. The reasonable inference should be that he died of injuries inflicted on him. (*Murphy J. C.*) PRATAB v. CROWN.

2 J. 51.

——S. 325—*Intention to give ordinary beating—By chance victim suffered grevious hurt—Punishment must be light:*

PENAL CODE (1860), S 376

If the accused intended to give ordinary beating and by chance the victim suffered such injuries as amounted to grievous hurt the sentence should not be very severe (*Murphy J C*) ABDUL GHANI v. CROWN

2 J 47

——S 376—*Rape—Charge not lodged lightly—But easily made—Difficult to refute—Weight to be attached to character of prosecutrix*

(*a*) It is a well known fact and has often been noticed judicially that rape is of all false charges the one most easily made and for an innocent accused the one most difficult to refute and it is known that such charges are often falsely made for the most trivial motives though prima facie it would seem that they would not be lodged lightly owing to the disgrace which having been the victim of such an offence generally entails

(*b*) Very great weight is consequently attached in such cases to the character of the prosecutrix and where she is a grown up woman and no physical signs of the actual rape can be expected from the medical evidence to signs of injury on her person and to the general probabilities of the cases to be deduced from the reputation of the prosecutrix (*Murphy J C*) KASHI v. CROWN

1925 S 39

——S 411—*Intention to annoy*—*Inference from action*

Intention to annoy is a fact which is only known to the person accused and must be inferred by the Judge from his actions Man must be presumed to intend the natural consequences of his action *1925 All 510* **Diss** (*Baker J. C*) KESRI MAL v. CROWN

2 J 20

——S. 464—*Essentials—Invoice*

(*b*) The essence of the offence of forgery is that the document should be false and that it should purport to have been prepared or executed by some person by whom it has not so been prepared or executed A false signature is not a necessary requirement

(*c*) Invoices are not necessarily documents which require to be executed or signed (*Murphy J C*) HIRA LAL v. CROWN

1926 S 1

——S 464—*'Makes'—Ordinary meaning—Not necessarily execution or signature*

(*a*) The word 'makes' in S 464 I P C must be taken to mean 'manufactures' or 'prepares' or 'produces' its ordinary meaning It is not used in the English conveyancers sense of this indenture made and does not necessarily connote an execution or signature of a document (*Murphy J C*) HIRA LAL v. CROWN

1926 S 1

——S 498—*'Detains' means "Keeps back"—Something in nature of control or influence is necessary—If woman has entire freedom of movement accused can not be convicted*

The word 'detains' in Section 498 means by derivation and according to the ordinary use of language, 'keeps back'. But there may be various ways of keeping

PENAL CODE (1860)—*Concluded*

back It need not necessarily be by physical force, it may be by persuasion or by allurements and blandishment But there should be something in the nature of control or influence which can properly be described as a leading [illegible] of the woman Hence where the woman has entire freedom and accused does not obstruct her from going wherever she likes, he cannot be convicted under Section 498 as he cannot be said to [illegible] her (*Norman J C*) MANGI LAL v. MUL CHAND

1936 J 11

——S 500—*Should not be tried by Honorary Magistrate*

The offence of defamation is a highly technical branch of law and it is not possible for a Bench of Honorary Magistrates to properly appreciate the many potentialities in it for the defence or the prosecution Such a case therefore should not be allowed to be tried by a Bench of Honorary Magistrates (*Shannon J C*) FATEH CHAND v JETH MAL

3 J 72

PIRZADAS

See, Mohammedan Law Pirzadas

PLEADINGS

See, Practice—Pleadings

POLICE ACT (V OF 1861)

——S 31 and S 32—*Scope*

In exercise of their duties under S 31 the Police have no authority to demand entrance into the private houses of persons unconnected with the procession.

POLICE ACT (1861) *Concluded*

The police have no inherent right to enter upon private property in order to facilitate the discharge of their duties They can do so as of right only by virtue of statute empowering them to do so The criterion for an offence under S 32 is not whether the orders are reasonable (*Wilson J C*) JAWAND LAL DUTT CHOWDHARY MAL v CROWN

1935 J 1

PRACTICE

Amendment *See* C P C—O 6 R 17

Appeal *See* Appeal

Appellate Court *See*, Appellate Court

Burden of Proof, *See* Burden of Proof

Cost, *See* C P C—O 35 O 41 R 22 and Costs

Decree *See* C P C O 20 and Decree

Evidence

Execution *See* Execution

Interest, *See* Interest

Issues

Judgment

Judicial order

Jurisdiction

Law Governing.

Limitation, *See* Limitation

Official Receivar

Nazir.

New Case

[illegible]

PRACTICE—(*Contd*)

Paper Book

Parties

Partition suit, *See* Partition

Petition writers

Pleader *See* Legal Practitioner

Pleaders Fee, *See* C P C—S 35

Pleadings

Precedents

Procedure

Relief

Review *See* C P C—O 47

Revision *See* C P C—S 115

Trial

Witness, *See* Practice—Evidence

Amendment

See C P C—O 6 R 17

Appeal

See ' Appeal '

Appellate Court

See Appellate Court

Burden of Proof

See, Burden of Proof.

Costs

See, C P C—S 35 & O 41, R 22
Costs

Decree

See, C P C—O 20
Decree

PRACTICE—(*Contd*)

Evidence

——**Evidence**—*Appreciation—No defence—Sworn testimony for plaintiff—Dismissal of suit inequitable*

To reject an undefended claim which is supported by sworn testimony is inequitable (*Baker J C*) FIRM NOOND RAM JAGGAN NATH v. GULAB CHAND
2 J 31

——**Evidence**—*Party not necessarily bound by statements of his own witnesses*

There is no such absolute rule that a party is bound by all the statements of his own witnesses Such rule would not work in India where winning over the other side's witnesses is not at all an unknown practice. (*Norman J C*) UMAR BUX v. WAZIR ALI.
***5 J. 4 (III)**

Execution

See, Execution

Interest

See, Interest.

Issues.

——**Issues**— *Accurate*

See, Notification by J C
1936 J 20 (N S)

——**Issue**—*Not raised—No presumption that parties have adduced all evidence*

Where an issue has not been raised expressly it cannot be presumed that the parties have adduced all the evidence available to them (*Broomfield J C*) NASIR UDDIN v. NOOR MOHAMMAD
***5 J 5 (I)**

PRACTICE—(Cont.)

——**Issues**—*Points in issues but not pleaded*

When points are put in issues which do not appear in the pleadings it is a sound rule to follow the issues. *11 B 510 Foll.* (*Norman J C*) RAM CHANDRA v. RADHA KISHAN

1934 J 70

Issues not happily framed—*Parties must be ready with their evidence*

The points for decision were perhaps not happily framed but in a Small Cause Court suit where issues are not framed, before hearing parties must have their evidence ready to support their case. (*Norman J C*) KISHAN LAL v. F. RAM DAYAL KHAJU LAL

***1934 J 26**

Judgment

See, C P C —O 20
Criminal trial—Judgment

——**Judgment**—*Should specify which parties are to receive costs and how many sets are allowed*

When there are several parties the judgment should make clear which parties are to receive costs and how many sets are allowed. (*Norman J C*) ABDUL RAHMAN v. DIDAR BUX

1936 J 117

——**Judgment**—*Misdirection by Judge—Mistake of law—Interference with findings of fact*

Misdirection by a judge amounts to a mistake of law. (*Norman J C*) MANGI LAL v. HUSANI

1934 J 31

PRACTICE—(Cont.)

Judicial order

——**Judicial order**—*Evidence recorded by Registrar of Court—Court's order written by Registrar and only initialled by Judge—Practice objectionable*

Evidence recorded by Registrar and Court's order written by Registrar and only initialled by the Judge *Held*. This is an objectionable practice which has been adversely commented on various occasions. (*Norman J C*) SUA LAL v. MOOL CHAND

1936 J 160

——**Judicial order**—*Office notes—On matters requiring order—Judge should not pass orders on office notes*

(4) The practice of passing orders on an office note on matters which require a Judicial order is undesirable and should be stopped. (*Norman J C*) B B & C I RY. v. THE EDWARD MILLS COMPANY LIMITED BEAWAR.

5 J 83

——**Judicial order**—*Suit against legal representatives - Duty of court to scrutinise plaintiff's claim*

(b) A court should proceed with care in examining plaintiff's claim against legal representatives who have no personal knowledge of the alleged transaction. (*Jolly J C*) NEMI CHAND GULAB CHAND v. NATHA

5 J 7

——**Judicial order**—*Order ... reference to authority*

PRACTICE—(*Contd*)

When making an order it is necessary to state the authority on which it is made (*Murphy J C*) AZAM ALI v MST NANNI BIBI

3 J 13

——**Judicial order**—*Wrong reference to law by court—Court must be taken to have done what it could do under correct law*

(*a*) A court must be taken to have done that which it could only do under the provisions of the law A mention of a wrong provision in the order will not make that order under that provision *47 A 181* **Foll** (*Baker J C*) S SOBHAG MAL LODHA v KISTUR CHAND

1926 S. 41

Jurisdiction

--**Jurisdiction**—*Insolvency—Mangliawas*

See Notification by C C

1936 J 15 (N S)

——**Jurisdiction**—*New Law*

See, Practice—New Law

——**Jurisdiction**—*Practice cannot confer Jurisdiction*

A Court can not by mere practice acquire any jurisdiction not given to it by its charter or act of constitution (*Barlee J C*) ABDUL AZIZ v AMIR ALI

2 J 33

Law Governing

——**Law Governing**—*Court may apply law applicable to facts before it*

A court is justified in applying any law that may be applicable to the facts before it but it is not so justified when the facts necessary for a decision on a point of law are neither pleaded nor proved (*Baker J C*) S GULAB CHAND v MUKAND BEHARI LAL

1925 S 45

Limitation

See Limitation

Official Receiver

— **Official Receiver**—*His Powers*

See Notification by J C

1934 J (N S)

Nazir

——**Nazir**—*Sale not completed—Nazir not entitled to remuneration*

(*b*) The rules do not provide for payment of any remuneration to the Nazir when the sale has not been completed (*Murphy J C*) BEHARI LAL v THE DISTRICT NAZIR

3 J 51

New Case

——**New Case**—*Interest*

In plaint interest claimed by way of damages and mercantile usage not set up In cross examination defendant admitted that interest was usually charged in sugar trade *Held* plaintiff cannot be allowed to change his course of action (*Norman J C*) KISHAN LAL v RAM DAYAL KHAJU LAL

***1934 J 26**

PRACTICE—(Contd)

——New Case— [illegible]

[illegible]

[illegible] C[illegible] Mal

*3 J 6

——New case— [illegible]

[illegible] *[illegible] fr[illegible]* and the [illegible] the defendant [illegible] [illegible] in the plaint or on a cause of action inconsistent with his pleadings *53 B 38 1927 Ran 118 1926 Ran 19 1127 C 86* **Rel** (*Shannon J C*) S UMED MAL v [illegible]

*5 J 5 (I)

New Law

Appeal

——New Act— *Passed subsequent to filing of suit—Appeal governed by Old Act unless New Act expressly provides to the contrary*

An appeal is a mere continuance of the original proceeding initiated by the filing of the plaint The right to continue that proceeding by way of an appeal cannot be affected by a new Act, unless it expressly so provides, *50 A 96)* **Followed** (*Mukerji and Young J J*) ALTEX RASUL ALI KHAN v BAL KISHAN

*1934 J 28
=A I R 1934 All. 709=3 A W. R 604
=1934 All L R 845=151 I C 362

PRACTICE—Contd

——New Law— *Alteration in law during pendency of suit—Appeal governed by old law*

[illegible] A statute giving or taking away a right of appeal is not merely procedural [illegible] has no retrospective effect The [illegible] governed by the old law unless express provision is made regarding [illegible] the new statute *1905 A C 369* **Foll** (*Shannon J C*) MODI LAL v M[illegible] LAL

4 J. 7

——New Law— *Decree passed under old law — Appeal also lies under old law*

The right of appeal on the merits which had accrued under S 15 of Regulation I of 1877 was not taken away by the new Regulation IX of 1926 (*Baker J C*) ABDUL RAHMAN v MST SADDI.

2 J. 27.

Execution.

——New law— *Execution—Suit filed before new Regulation came into force—Execution application filed after that date—It is governed by New Regulation*

An execution application filed after the 1st of January 1927 though arising out of a suit filed before that date is not governed by the Courts Regulation I of 1877 and even when the first appeal Court confirms the trial court's order a second appeal is competent (*Norman J C*) MST. GOPI v JUGAL KISHORE

*5 J. 3 (III).

Jurisdiction.

——New Law— *Jurisdiction*

PRACTICE—*Contd.*)

When a Regulation (or Act) is repealed parties have no substantive right that the jurisdiction which a Judge or Court exercised under the repealed Regulation (or Act) continues under the new Regulation *I A M L J 7* **Not Applicable** (*Weston J C*) HET RAM JETH MAL v TULSI RAM RAM SWARUP

1935 J 18

Limitation

——**New law** *Limitation is procedural law — Limitation changed during suit— New law governs appeal*

(*c*) Limitation is purely a matter of procedure or adjective law and no litigant has a vested right in procedure If the law of limitation is changed during the pendency of a suit the new law governs the case in its further stages and not the old one (*Shannon J C*) MODU LAL v MOHAN LAL

4 J 7.

——**Amendment of Limitation Act**—*No retrospective effect*

(1) The amendment of the Limitation Act does not operate retrospectively so as to validate applications which were time barred under the old law (*Jolly J C*) ABDUL AZIZ v CHAND MAL

Paper Book

——**Paper Book**—*Rules for preparation of*

See, District Judge's Notification

2 J 60 (G S)

PRACTICE—(*Contd.*)

Parties

——**Parties**—*Description of—Minors and Legal Representatives*

See, Notification by J C

1936 J 13 (N S)

Partition Suit

See, Partition

Petition Writers and Typists

—**Partition Writers and Typists**—*Rules*

See Notification

1936 J 26 (N S)

Pleader.

See, Legal Practitioner

Pleader's Fees

See C P C—S 35

Pleadings.

——**Pleadings**—*Accurate*

See Notification by J C

1936 J. 20 (N S)

——**Pleadings**—*Plaints—Translation of*

See, Notification by District Judge

1934 J 5 (N S)

——**Pleadings**—*Translation and Comparison of*

See, Notification by District Judge.

1934 J 5 (N S)

——**Pleadings**—*Translation—S C C Revisions*

See, Notification by J C

1934 J 5 (N S)

PRACTICE—(Contd.)

——**Counter written statement**—*Written statement putting forward [illegible] claims—Desirable that [illegible] file a counter written statement*

Whenever the written statement puts forward anything in the nature of [illegible] claim it is advisable [illegible] that the plaintiff [illegible] file [illegible] counter written statement (Norman J. C.) BALU RAM v. MAGAN LAL

*1936 J. 217

——*Construction [illegible]*

[illegible] Mutual [illegible] (Norman J. C.) KISHEN LAL v. MOTI LAL

*1934 J. 27

——**Points**—*Not pleaded but in issue*
See, Practice—Issues

Precedents

—**Precedents**—*Conflict of—It is usual to follow the Allahabad High Court view*

When there is a long course of decisions of the Allahabad High Court on a particular point it is usual to follow that view if there is a conflict of decisions. But when only a single decision is cited and there is a contrary decision of another High Court this Court is not bound to follow the Allahabad High Court and should apply its own mind to the point in issue (Norman J. C.) BADRI LAL v. RAM DAS

1934 J. 10

—— **Precedents**—*Allahabad High Court decisions to be followed*

PRACTICE (Contd.)

In this District the Allahabad High Court decisions are to be followed in preference to those of Bombay or of any other High Court (Shannon J. C.) DHANNA LAL v. CHITAL MAL

*5 J. 4 (I).

——**Precedent**—*Conflict*——*Generally Allahabad view preferred*

The general rule in Ajmer is to prefer the Allahabad view when there is a divergence of opinion in the different High Courts (Jolly J. C.) SUJA NAND v. MOOL CHAND

4 J. 27.

—**Precedents**—*Conflict of—Allahabad view preferred*

(c) In Ajmer Merwara it is reasonable to prefer the view of the Allahabad High Court in certain classes of cases. But this is not an invariable practice. This court is at liberty to adopt in cases of difference of opinion, the view that appeal to it the most (Broomfield J. C.) MST. KAJJI v. NANNE KHAN

3 J. 64.

——**Precedents**—*Conflict of—Ordinarily Allahabad view is preferred*

(b) When there is a conflict of opinion on a point amongst the various High Courts the Allahabad High Court view will generally be preferred but not always and necessarily (Broomfield J. C.) KHADIMS OF DURGAH KHWAJA SAHIB v. DEWAN SYED ALEY RASUL

4 J. 42

——**Precedents**—*Conflict*——*Allahabad view prevails.*

PRACTICE—(*Contd*)

(c) Since Ajmer Merwara has till recently been subject to the Allahabad High Court the view adopted by that court, where there is conflict of opinion, should be adopted here (*Barlee J. C*) MST. NANHI BIBI v MAHMAD ALI

1926 S. 25.

Procedure

——**Procedure**—*Judge initialing a document—Should make clear whether he is admitting it in evidence or marking for identification*

When a judge initials a document he should make it quite clear whether he is admitting it in evidence or marking it for indentification (*Norman J C*) PHOOL CHAND v. LIKHMI CHAND

1936 J 22

——**Procedure**—*Suit for recovery of moneylent—Promissory note in existence but not admissible for insufficiency of stamp Plaintiff not bound to refer to it:*

Where the plaintiff cannot sue on a promissory note on account of its being inadmissible in evidence he is not bound to refer to it in his plaint for the recovery of money lent *1934 All 837* **Dist** (*Norman J C*) ONKAR BALLABH v GIRWAR LAL

1936 J 37.

——**Procedure**—*Immovable property subject to interim attachment—Court has no power to order sale under Civil Procedure Code*

Under the Civil Procedure Code a Court has no power to order sale of immovable property subject to interim attachment (*Weston J. C*) ABDUL LATIF v. AHMAD HUSAIN.

1935 J 77

PRACTICE—(*Contd*)

——**Procedure**—*Admission of document—Without proof, in absence of objection—Admissiblity cannot be questioned*

When a document which would on proper proof be relevant, is admitted in evidence without such proof, but without objection, no party can afterwards be heard to say that it is inadmissible for want of proof (*Norman J C.*) MISRI LAL v CHAND MAL

***1934 J. 50**

——**Procedure**—*Court Fees—Deficient—Appeal—Objection to*

The hearing of the appeal is a proper time to urge the objection that appeal is time barred as deficient court fees was paid after Limitation (*Norman J. C*) HIRA LAL v. HAZARI MAL JETH MAL.

6 J 16

——**Procedure**—*Interlocutory application*

When an interlocutory application is presented not to the Judge in Court but to his office, there is no duty cast on the court to let the applicant know what orders have been passed on it It is for the applicant to come himself and enquire. (*Norman J C*) ABDUL NABI KHAN v. GENERAL MANAGER, COURT OF WARDS

***6 J 7.**

——**Procedure**—*Valuation—Appeal—Doubtful—Ask Court's opinion*

When it is doubtful how an appeal is to be valued, the proper course for the appellant is to ask for the opinion of the court (*Norman J C*) HIRA LAL v HAZARI MAL JETH MAL.

6 J 16

PRACTICE—(*Contd.*)

—Procedure—*Witnesses—Their repeated attendance must be saved by courts*

The courts owe a duty to witnesses to save their repeated attendance and when any are present they must, if possible be examined and allowed to go If this is not done and witnesses are recalled it is an abuse of the process of the court and act of oppression (*Murphy J C*) MST PHAGNI v ASA RAM

3 J 21

——Procedure—*Case fixed on holiday—Party not present on next working day—No default of appearance*

Fixing a case on a holiday and absenting a party on the following day is improper (*Murphy J C*) IMAMUDDIN v. FIRM VALJIBHAI RATANSI

1 J 9

——Procedure—*Security — Verification of—By clerks of Vakils—Not proper*

See, Notification by J C

1934 J 7 (N. S)

Relief

——Relief.

Also see, C. P C —O 7, R 7

——Relief—*Court should grant what relief it can*

The general rule is that a court should give what relief it can (*Norman J C*) TEMPLE OF SRI RAM CHANDRAJI v NATHI

1936 J. 134

——Relief—*Inconsistent reliefs can be claimed*

PRACTICE—(*Concluded*).

(*c*) Inconsistent reliefs can be claimed in the alternative (*Macklin J. C*) NARSINGH DAS v. NARAIN DAS

5 J. 73

——Relief—*Defendants particular status not pleaded which would make him liable —But court bound to take judicial notice of that status—Defendant liable*

(*b*) To allow defendants to escape a liability by an omission to plead a status which is theirs by refusing to take judicial notice of a provision of the statutory law would be an abuse of the powers of the Court and a defeating of the ends of justice within the meaning of S 151 C. P C (*Murphy J C*) MOTA v. RAM KISHEN

1925 S. 49

Review.

See, C P. C —O. 47

Revision

See, C P. C —S 115

Trial

——Trial of suits—*Theory governing provisions of Code of Civil Procedure—Rules for guidance of courts—Parties must enter witness Box*

See J C s notification

2 J 54 (G S)

Witness

See Practice—Evidence

PRE EMPTION.

See, Ajmer Laws Regulation

PRINCIPAL AND AGENT

——*Agent's authority to sell*

In the absence of instructions from his principal, an agent has no right to sell (*Norman J C*) F CHAMPA LAL GHISU LAL v F AJEY RAJ SHEODAN SINGH
1934 J 75

——*Station Master has no authority to bind Railway to pay compensation*

(c) Station Masters and Traffic Inspectors have no authority to bind the Railway Administration to pay any compensation to consignees (*Murphy J C*) B B & C I Ry v FIRM JAMNA LAL RAM NIWAS
1925 S 14

PRINCIPAL AND SURETY

Also see Evidence Act—S 19

——*Admission of liability by principal against surety after termination of transaction is relevant though not conclusive*

An admission of a principal does not cease to be relevant against the surety because it was made after termination of the transaction for which the surety had bound himself But such admissions are not necessarily conclusive, *5 A L J 142* **Diss** *20 I C 337* **Foll.** (*Norman J C*) BADRI LAL v. RAM DAS.
1934 J 10

——*If section 135 of the Contract Act not applicable to a bond given to Court, the equitable principles on which the section is based apply*

If section 135 of the Contract Act does not apply to a bond given to the Court the

PRINCIPAL AND SURETY—(*Concluded*)

equitable principles on which that section is founded do apply, and a discharge can be given to the surety, *1930 Bom 122, 1930 Lah 896* and *56 Mad. 625* **Foll** (*Norman J C*) NATH MAL v. ABDUL HAMID.
1936 J 1.

——*Court materially altering the terms—Surety is discharged*

If the Court by its action materially affects the terms of the surety bond, without the assent of the surety, the latter is discharged, *1935 Nagpur 258* **Approved** (*Norman J C*) NATH MAL v ABDUL HAMID
1935 J. 1

——*Surety bond not executed simultaneously with Principal bond—No consideration*

If a surety bond is not executed simultaneously with the principal bond, the suretyship is without consideration (*Jolly J C*) DAYA BHAI v D ONKAR SINGH
***3 J 3**

PRIVY COUNCIL

——Appeal *By Prisoner under sentence of death*

See Notification
1933 J 13 (N S)

——**Rule 9—**

See, C P C—O 45, R. 7

POSSESSION.

——*Suit for recovery of possession—Defendant can question plaintiff's title if plaintiff's alleged vendor suffers him*

Defendant can challenge plaintiff's title 27 A 278 Expl 22 I C (1) Foll (Butler J C) Abdul Rahman v Mst Saddi 2 J 27

PROVIDENT FUNDS ACT (XIX OF 1925)

—S 3 (2)—*Provident Fund money in the hands of dependant not attachable*

Applicants' father was a depositor in a Provident Fund Applicants were his nominees Execution sought against money which stood to his credit.

Held, the applicants take the money free from any debt incurred by their deceased father, *1931 Mad 797* Not Applicable (*Norman J C*) Yusuf Khan v Madar Bux.

1934 J. 41.

——S 3 and S 5 (1)—*Liability to pay debts of the deceased—Nominee is liable but not a dependant*

Section 3 (2) cannot be confined to cases where there is no nomination A nominee is a person to whom a deposit is payable under the rules of the fund and therefore if he is a dependant he is entitled to the protection of the section There is a material difference in the meaning of the expressions 'shall vest in' and "shall receive absolutely". The former implies that the deposit is not part of the deceased's estate and so is not liable to debts, the

PROVIDENT FUNDS ACT (1925)—*Contd.*

latter that nomination will overrule the the ordinary law of succession (*Norman J C*) Bartlet v Damodar Das, Mr

1936 J. 29

——S 5—*Not applicable when no outstanding nomination*

When nomination under Act IX of 1897 was revoked by S 69 of the Indian Succession Act by marriage, S 5 of Act XIX of 1925 has no application, because there was not at the time when it came into force any outstanding nomination, *6 R 68* Disc (*Norman J C*) Bray (George Henry) v Bray, Mrs

6 J 60.

PROVINCIAL INSOLVENCY ACT (V OF 1920)

——S 4 (3)—*Debtor's immovable property cannot be sold before adjudication*

Insolvency Judge has no jurisdiction to order sale of the debtor's immovable property before adjudication The Section merely authorises the insolvency Judge to decide objections and questions raised by third parties (*Weston J C.*) Abdul Latif v Ahmad Husain

1935 J 77.

——S 4—*Scope—Only debtor's saleable interest can be sold*

S 4 is provided in order to give a finality to decisions of the Insolvency Court on question of title. The third clause does not create any extra ordinary power of sale, but permits sale of the saleable interest when the Court does

not think it necessary or expedient to decide questions of title. (*Weston J C*) ABDUL LATIF v AHMAD HUSAIN
1935 J 77

——**S 5**—*Insolvency court is not court of ordinary Civil jurisdiction—Provisions of C P C apply as far as incorporated in Provincial Insolvency Act*

(*b*) An Insolvency court is not a court of ordinary Civil jurisdiction and the provisions of the Code of Civil Procedure apply to it only in so far as they have been incorporated in Act V of 1920 (*Barlee J C*) J R DAJI v G R HUGHES
1926 S 31

——**S 5 and S 27 (2)**—*Court can extend time for discharge even after expiry of the time originally fixed*

A court has power to extend time even after the expiry of the time originally fixed *51 C 337, 7 P 375 53 M 288* **Foll** (*Weston J C*) CHOUTH MAL BHAIRON LAL v BHOPAL SINGH.
***1935 J 43**

——**S 10 (1)**—*Question not whether debts can be satisfied immediately but whether assets locked up*

The question is not whether the debts can be satisfied immediately out of the assets but whether the assets are so locked up that the debtor will not be able to pay at the time he is called upon to pay (*Weston J C*) MOHAN LAL v RATNA
1935 J 51

——**S 10 (1) (a)**—'*Debt includes secured debt*

The word debt includes a secured debt A debtor s petition under section 10 can therefore include secured debt to make up the statutory total of Rs 500/ (*Norman J C.*) BHAGWAN DAS v KANA
6 J 44

——**S 20**—*Ad interim Receiver—Appointment of—No notice to creditors*

For the appointment of ad interim Receiver no notice to the creditors is necessary (*Jolly J C*) RAMESHWAR LAL v LAXMI NARAIN
***3 J 2**

——**S 27 (2) and S 5**—*Court can extend time for discharge even after the expiry of the time originally fixed*

See S 5 above

——**S 28 (5)**—*Moiety of salary vests in Receiver*

(*d*) The wording of S 28 (2) of the Insolvency Act is clear A moiety of a public servant s salary vests in the Receiver and he has no power to leave any of it in the insolvent s hands *10 A 213, 38 I C 410* and *21 I C 950* **Rel** (*Barlee J C*) J R DAJI v G R HUGHES.
1926 S 31

——**S 33 & S 59**—*Schedule rightly or wrongly framed—Payments cannot be questioned*

If a receiver makes a payment towards a debt which is entered in the Schedule framed under S 33 such payment is according to law even though the debt is one which should not have been entered in the Schedule e g Schedule

whether rightly or wrongly framed is Res Judicata as regards payments actually made under it. (*Norman J C*) BADRI LAL v BAKHTAWAR ALI

6 J 23

——S 31—*Debt not barred at commencement of Proceedings—Does not become barred by lapse of time*

A debt not barred at the commencement of the Insolvency proceedings does not become time barred for the purposes of those proceedings by any lapse of time (*Jolly J C*) BULAKI MAL v C H WESTRON

***3 J 2**

——S 35 & S 37—*Adjudication annuled—Refund of moneys paid—Inherent powers*

Insolvent applied for discharge The Judge annuled the adjudication under S 35 on the ground that the insolvent had not been rightly adjudicated an insolvent as the major portion of the debts were due not from the insolvent but his father Subsequently insolvent applied for refund of moneys paid out by the receiver to the creditors of his father This was allowed under S 37 *Held* (i) though S 37 does does not itself authorise an order of the nature made yet in so far as such an order is based on the same grounds as the order of annulment itself the court has inherent powers to make it (ii) such an order must be made at the same time as the order of annulment and not subsequently, *1935 Pat 84* **Dist** (*Norman J C*) BADRI LAL v BAKHTAWAR ALI

6 J 23

——S 42 (a)—*Discharge—Grant of—On payment of eight annas in the Rupee*

Ordinarily an insolvent should be granted his discharge on paying eight annas in the Rupee (*Weston J C*) RASHID AHMAD KHAN v SHEO DAYAL

1935 J 86

——S 42 (f)—*Speculations—Must be rash and hazardous*

The dealings may not have turned out well but for the purposes of S 42 (f) the speculations must be rash and hazardous (*Weston J C*) RASHID AHMAD KHAN v SHEO DAYAL

1935 J 86

——S 43—*No automatic discharge on failure to apply*

An annulment does not take place ipso facto on expiry of the time fixed for applying for discharge (*Weston J C*) CHOUTH MAL BHAIRON LAL v BHOPAL SINGH

***1935 J 43.**

——S 56 (2) (b)—*Receiver's Commission*

When an encumbered property is sold by the Receiver in bankruptcy of his own motion the receiver is entitled to his commission only on the balance of the sale proceeds which is available for distribution among the unsecured creditors But when a secured creditor comes to court and asks that the Receiver should sell the mortgaged property he does consent by necessary implication to the Receiver getting his commission on

whole sale prceeds (*Norman J C*) BIRDH MAL LODHA R B v PRABHU DAYAL

***6 J 6**

——**S 59 & S 33**—*Schedule rightly or wrongly framed—Payment cannot be questioned*

See S 33 above

——**S 66 (2)**—*Receiver can fix allowance out of moiety*

(*c*) Under S 66 (2) of the Insolvency Act the Receiver is empowered to make an allowance to the insolvent for his maintenance out of the moiety of his pay attached by him (Receiver) *40 All 213 38 I C 410* and *21 I C 950* **Not Foll** S 66 (2) is independent of S 66 (1) of the Act (*Barlee J C*) J R DAJI v G R HUGHES

1926 S 31

——**S 75 (1)**—*Person aggrieved—Meaning of—Appeal does not lie on mere error in procedure*

A person aggrieved must be a man who has suffered a legal grievance a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully effected his title to something A person cannot be said to be aggrieved by a legal error in procedure only which does not affect his substantive rights (*Norman J C*) BADSHAH BEGUM v MT FERMATMA SWALLI

6 J 32

——**S 75**—*Revision lies*

(*a*) S 75 of the Provincial Insolvency Act follows the wording of S 115 of the C P C and an aggrieved party is entitled to file a Revision application under it to the High Court (*Barlee J C*) J R DAJI v MAJOR G R HUGHES

1926 S 31

——**S 78 (2)**—*Proviso—Word Proved refers to proof of debt under S 33*

The word 'proved' in the proviso to Section 33 which lays down that after an adjudication has been made all persons alleging themselves to be creditors in respect of debts provable under the Act shall tender proof of their debts *1934 Nag 282* and *1929 Cal 157* (2) **Dist** (*Norman J C*) CHHITAR MAL v LACHMAN

1936 J 156.

PROVINCIAL SMALL CAUSE COURTS ACT. (IX OF 1887)

——**S 17**—*Security deposited within time—Application is in time*

So long as the deposit or security required under Section 17 of the Provincial Small Causes Courts Act is furnished within the time prescribed for the making of the application it is within time (*Murphy J C*) JAI KISHEN v GHISA LAL

1 J 14

——**S 25**—

Error of Law

Finding of Fact

Interlocutory order

Miscellaneous.

Error of Law

—S 25—*Error of Law—This section is wider than S. 115 of C P C—High Court will interfere with wrong decision on question of Limitation*

The rule under Section 25 of the Provincial Small Causes Courts Act is not similar to S 115 of the Code of Civil Procedure In applications under S 25 of Provincial S C C Act points of law not involving jurisdiction, have constantly been allowed to be raised

There is no antithesis between law and justice The object of law is to secure justice Any decision which is contrary to statutory law cannot be described as substantially just, *1925 A M L J Supplt 6* **Not Foll** (*Norman J C*) DHANNA LAL v RAM SINGH.

1936 J 68

[**—S.25**—*Error of Law —Wrong decision of Limitation—No Revision*

(*b*) A wrong decision on a question of Limitation is not *per se* ground for interfering in revision either under S 115 of the C P C or S 25 of the Small Causes Courts Act, especially when substantial justice between the parties has been done by the Lower Court (*Murphy J C*) SANWAL RAM v NANHEY KHAN.

†1925 S 6]

—S 25—*Error of Law—No interference if Judicial authority*

(*c*) If there is a judicial authority for the view taken by the Small Cause Court the High Court will not distrub it even if it disagreed with it (*Macklin J C*) SHEO NARAIN v HUKMA DEVA

5 J 57.

Finding of Fact.

—S 25—*Finding of fact—Interference under exceptional circumstances*

Findings of fact will be interfered with only under exceptional circumstances, *15 B 272* and *1925 A M L J Supplt. 17* **Referred.** (*Weston J C.*) CHUNNI LAL v SHEO PRASAD

***1934 J. 143**

—S 25—*Finding of fact—Misdirection by Judge—Interference*

Misdirection by a judge amounts to a mistake of law (*Norman J. C*) MANGI LAL v. HUSANI

1934 J 31.

—S 25—*Finding of Fact—Decision inequitable—High Court should interfere*

Though in revision it is not usual to go into the merits of a disputed claim yet the High Court should interfere if it appears that the decision of the lower Court is inequitable (*Bailee J C*) FIRM NOOND RAM JAGGAN NATH v GULAB CHAND

2 J. 31

—S 25—*Finding of fact—No interference—Except when no evidence or finding impossible or perverse*

(*f*) Even in Revision under S 25 of the Provincial Small Causes Courts Act, it is not the practice to interfere with findings of fact unless there is not evidence to support the finding or unless the finding is

impossible and perverse, *1925 All 172* **Foll** Even the fact that the Revisional Court may have taken a different view of the evidence is not a justifiable ground for interference *48 I C 907* **Foll** (*Baker J C*) FIRM N C KANKARIA & CO v MOHAMED HUSAIN.

1925 S 17

——S 25—*Finding of Fact Ordinarily no interference*

(*a*) The whole object of the Provincial Small Causes Courts Act is to provide a comparatively cheap and speedy machinery for the disposal of small money claims The intention of the Legislature is that ordinarily the decision by the Small Causes Courts be final

(*b*) Under S 25 of the Act the High Court is not intended to perform the function of a court of appeal and would not ordinarily interfere on questions of pure fact

(*c*) The trial court is in a better position to appreciate the evidence of witnesses whom it has actually seen and heard and if the High Court interferes on a pure question of appreciaton of evidence it would stultify the whole object and intention of the Act

(*d*) Points in issue in Small Causes Courts are decided on very meagre evidence and the correctness of the decision may often be open to doubt but the mere fact that the High Court may be inclined to arrive at a different conclusion is no ground for interference (*Jolly J C*) KALLU v GHISA

4 J 66

Interlocutory order.

——S 25—*Interlocutory orders—Revision lies—Provisions wide*

(1) The provisions are wide and even interlocutory orders are open to revision under it (*Macklin J C*) MAN MAL v GOG RAJ.

5 J 1.

Miscellaneous

——S 25—*Judgment—Plaintiff proves his case—Nothing to excite suspicion—Yet suit dismissed—Judgment must indicate point on which suit dismissed*

(*a*) In a case where there is nothing to excite suspicion and where the plaintiff has given such proof of his claim as the law requires the plaintiff is entitled to have some indication from the Judge of the point on which he dismisses the suit, *23 Bom 334* **Foll** (*Jolly J C*) NEMI CHAND GULAB CHAND v. NATHA

5 J. 7

——S 25—*Plaint vague—Defendant not getting it cleared up—Plea cannot be taken in revision*

A plaintiff should not be allowed to set up a cause at variance with the plaint, but when a plaint is ambiguous and the defendant takes no steps to get the ambiguity cleared up the defendant should not be permitted in revision to set up that ambiguity (*Norman J. C*) PANCHU LAL v MANMOHAN LAL

6 J 39.

——S.25—*Order by Small Causes Court under S 95 C P C—Revision lies*

(a) A revision would lie against an order of the Small Causes Court under S 95 C P C as S 104 clause (g) has no application to orders of that Court *50 I C 896* **Foll** (*Baker J C*) FIRM N C KANHAPIA & Co v MOHAMED HUSSAIN **1925 S 17**

——Art. 8—*Ajmer Merwara—S C C can try only suits for house rent—They cannot try other classes of rent suits*

The Small Causes Courts in Ajmer Merwara have not been invested with powers to try all classes of rent suits They can only try suits for house rent (*Jolly J C*) M SUDERSAN DASS v GULAB CHAND

***3 J 4**

——Art 34—*Claim of money under award is cognizable*

(a) A suit for recovering money awarded by an Arbitrator is congnizable by Small Causes Court The fact that defendant impeaches the award as being invalid does not oust such jurisdiction or preclude it from adjudicating on the validity of the award, 42 *All* 169 & 45 *Bom* 318 **Rel** (*Baker J C*) KAN MAL v RAJ MAL **1926 J 14**

——Art 31—*Damages or mesne profits for use and occupation of house—Cognizable by S C C—When defendant actually received profits belonging to plaintiff suit barred*

A suit for recovery of damages or mesne profits for the use and occupation of a house is not barred from the cognizance

of a Small Causes Court under Art 31 It is only when a defendant is alleged to have actually received the profits belonging to plaintiff that the suit is barred under this article (*Jolly J C*) CHOGA LAL v. JAI NARAIN

***3 J 5.**

——Art 31—*Scope*

Article 31 is not applicable if there are no allegations that the money sued for was received by defendant (*Baker J C*) S AMEER ALI v ABDUL AZIZ

1 J. 25

——Art 35—*Damages for Defendants refusal to allow plaintiff to irrigate fields*

(a) A suit for damages for refusing to allow the plaintiff to irrigate his land from a certain well is cognizable by Court of Small Causes *25 B* 85 & *25 M* 103 **Dist.** (*Baker J C*) KAN MAL v LAKHMI CHAND **1926 S 17**

——Art 35 (*ii*)—*Scope*

An action under S 235 of the Contract Act is an action in tort *Norman J C.*) F CHANDAN MAL MOHAN LAL v F BHOLA RAM PHOOL CHAND

1934 J 79

——Art 35 (*ii*) —*Test of whether plaint discloses a criminal offence*

The test of whether the plaint does or does not disclose an offence is whether the statements made in the plaint if proved, would by themselves and without proof of any further particulars involve the defendant in a conviction of a criminal offence (*Macklin J C*) SYED FAZAL HUSSAIN v. THE DURGAH COMMITTEE.

***5 J 1**

PUBLIC GAMBLING ACT (U. P. ACT OF 1925)

——**Application**—*U. P. Public Gambling Amendment Act (I of 1925) extended to Ajmer-Merwara*

See, Notification by Chief Commissioner
1 J 16 (J.S)

——**S. 1**—*"Common gaming house"—Case under clause (1)—Not necessary to prove that keeper makes profit*

When the case falls under clause (1), i e when the gaming is on digits of the sale price of any commodity, it is not necessary to prove that the keeper of the house makes a profit out of the gambling (*Norman J C*) CROWN v BHUDA RAM.
***1936 J 214**

——**S 1**—*"Instrument of gaming"—Money when used for betting is such "Instruments of gaming"*

Money when used for betting becomes an instrument of gaming (*Norman J C*) CROWN v. BHUDA RAM
***1936 J 214**

——**S. 1**—*"Instruments of gaming"—Includes coins used as stake money—House in which they so used is "common gaming house"*

Means of gaming include any coins used as stake money They may also be regarded as *instruments of gaming* and the house in which they have been so used must be regarded as a *common gaming house* (*Macklin J. C*) CROWN v. HARDEO
***5 J 1 (II)**

PUBLIC GAMBLING ACT (1925)—*Contd.*

——**S 1**—*Instruments of gaming'—Includes tickets used as memoranda to record wagers*

Tickets used as forms of memoranda to record as wagers are instruments of gaming, *65 I. C. 852* **Foll.** *17 B 184* **Dis** (*Baker J C.*) SURAJ MAL v. CROWN.
2 J. 10

——**S 3**—*Not necessary that every transaction should take place in gaming house*

It is not necessary that every transaction connected with gaming must take place in the house, *47 All 506* **Ref** (*Baker J C*) SURAJ MAL v. CROWN.
2 J 10

——**S. 6**—*'Instruments' found in house—Presumption that gaming carried for benefit of owner*

Instrument of gaming being found in the house, presumption arises under S 6 that it is a common gaming house and so it can be presumed that gaming is carried for the benefit of the owner, *45 A. 671 & 26 Cal. 1609* **Foll.** (*Baker J C.*) SURAJ MAL v. CROWN.
2 J 10.

RAILWAYS ACT (IX OF 1890)

Also see, Principal and Agent.

——**S 54**—*R 59 is not ultra vires:*

Rule 59 of the classification of goods rules is not ultra vires. (*Murphy J. C*) SAHIB CHAND SAINS MAL v. B.B. & C.I. RY.
1. J. 1.

RAILWAYS ACT (1890) S 72

—S 72—*Non-delivery—Loss*

The Railway must prove loss strictly before it can claim the protection of a risk note 3 A M L J 3 **Foll** (*Norman J C*) B B & C. I Ry v BISHAN LAL MOTI LAL

6 J 5

—S 72—*Risk Note—Form B—Non delivery—Railway must prove loss—Mere non receipt at destination is not loss*

In a suit for non delivery the railway must prove loss to claim protection under the Risk Note B More than mere non receipt at destination is required to prove loss. (*Murphy J C*) KANAHIYA LAL PERBEEN CHAND v THE B N W Ry & B B & C I Ry

3 J 3

—S. 72—*Risk Note—Form B—Over charge by mistake does not cancel Risk Note*

(*a*) An over charge of freight at Railway Risk rates at destination by mistake does not affect the contract embodied in Risk Note Form B (*Murphy J. C*) B B & C I Ry v FIRM JAMNA LAL RAM NIVAS

1925 S 14

—S 72—*Risk Note—Form H—Scope*

Under Risk Form H a plaintiff can succeed only on proof of misconduct of the servants of the Railway administration The proviso in Risk Form H is not consistent with the substantive clause laying down the condition of liability The proviso is likely to mislead persons seeking

RAILWAYS ACT (1890) S 77.

their remedy under the form (*Weston J C*) GANESHI LAL MANNA LAL v B B & C I Ry Co

1935 J 38

—S 72—*Risk Note—Form H—Misconduct—Burden of proof on consignor*

The consignor has to prove misconduct on the part of Railways Company s servants (*Norman J C*) B B & C I Ry v BISHAN LAL MOTI LAL

6 J 5

—S 72—*Risk Note—Form H—Misconduct—Effect of*

Misconduct on the part of Railway Administration does not render the Railway Company liable under the Risk note, 51 B 103 **Foll** *1930 Pat 559 (2) and 1931 Cal 751 (2)* **Diss** (*Norman J C.*) B B & C I Ry v BISHEN LAL MOTI LAL

6 J 5

—S 72—*Risk note—Form A—Burden of proof—Railway must prove Loss—Non delivery does not amount to loss*

Mere non delivery does not amount to loss In suits based on non delivery the Railway Company must prove loss affirmatively *15 B 1201 45 All 530 51 C. 615, 3 A M L J 3, 6 P 189* **Foll** *1926 Pat 169 1926 Pat 118 1926 Pat. 190, 1926 Lah 590* **Diss** *6 P 718* **Ref** (*Norman J C*) B B & C I Ry v SITA RAM AJODHYA PERSHAD.

6 J 64

—S 77—*Notice of claim under S 77 of the Railway Act is not notice of suit under S. 15 (2) of the Limitation Act*

RAILWAYS ACT (1890), S 77.

S 15 (2) of the Limitation Act prescribes that the period of any notice required by law shall be excluded from the period of limitation

But S 77 of the Railways Act does not prescribe any such notice It only contemplates a submission of claim. The period of such a submission cannot therefore be excluded within the meaning of S 15 (2) of the Limitation Act, *70 I C* 109 **Not Foll** *(Macklin J C.)* B B & C.I. Ry v FIRM LAXMI NARAIN CHAND MAL

5 J 53

——S. 77 and S. 140—*Notice on Agent*

Under Sections 77 and 140 a notice of claim must be served on the Agent of the Railway. *(Murphy J C)* SAHAB CHAND SAINS MAL v B B & C I. Ry.

1 J 1.

——S 80—*Liablity of other Railway*

A Railway to whom the goods were not in the first instance consigned cannot be held liable unless the loss is proved to have occurred on its system, *23 I C. 22, 18 I. C. 294*, 1926 *Lah* 116 and 1926 *All.* *299* **Foll** *(Norman J C)* B B & C I. Ry. v. SITA RAM AJODHYA PERSHAD.

6 J. 64

——S 80—*Receiving Railway not agent*

The Railway Company receiving consignment for despatch to a place on another Railway is not an agent of the Railway Company which has to deliver it, *1924 Pat 811* **Not Foll** *(Norman J. C)* B B & C I. Ry. v. SITA RAM AJODHYA PERSHAD.

6 J. 64.

RAILWAYS ACT (1890)—*Concluded.*

——S. 140—*Notice imperative*

The language of section 140 of the Indian Railways Act is imperative and a notice complying with its terms is necessary before a suit can be brought against a Railway administration *(Murphy J C)* B.B. & C I. RY v. MOHAMMED IBRAHIM

1 J 10

——S. 140 and S. 77—*Notice on agent*

See, S 77 above

RAILWAY RECEIPT

——*Transfer of title—Can be effected by endorsement and not delivery*

A Railway receipt is an instrument of title But mere delivery of it is not sufficient to transfer the title. There must be an endorsement in writing on it. *(Jolly J. C.)* THE SECRETARY OF STATE v RAMDHAN DAS KALYAN MAL

***3 J 5.**

REFORMATORY SCHOOLS ACT (VIII OF 1897)

——S 8—*Power of Magistrates specified*

See, Notification by Chief Commissioner.

1 J. 16 (J S)

REGISTERATION ACT (XVI OF 1908).

——S 2 (7) and 17 (1) (d)—*Qabuliat for more than a year—Registration compulsory*

Lease includes a Qabuliat. *(Norman J C)* ALLA DIA v. HUSSAIN BAKSH

***1936 J 213.**

REGISTRATION ACT (1908), S 17.

—S 17 (a)—*Munafi rent—Contract to collect—Requires compulsory Registration*

A contract to collect Munafi rent requires compulsory registration because it is a benefit arising out of land (*Jolly J C*) M SUNDERSAN DASS v. GULAB CHAND.

***3 J 4**

—S 17(c)—*Receipt of mortgage moneys—Registration not necessary*

(*c*) *Obiter*—A mere receipt of mortgage money does not require registration (*Murphy J C*) DHANNA LAL v RATAN LAL.

1927 S. 42

—S 17 (d)—*Rent Note for six months—Does not require registration—It is admissible in evidence*

The rent note was for 6 months only and so did not require registration under Section 17 of the Registration Act and not being a lease did not require registration under the Transfer of property Act (*Norman J. C*) MD IBRAHIM v ABDUL KARIM BEG, MIRZA.

***1936 J 209**

—S 17 (1)(d) and S 2 (7)—*Qabuliat for more than a year—Registration compulsory*

See, S. 2 (7) bove.

—S. 49—*Unregistered Qabuliat for more than a year—Oral evidence not admissible except as evidence of part performance*.

REGISTRATION ACT (1908)—*Concluded*.

Suit founded on a contract contained in an unregistered qabuliat for more than a year. *Held*, the law of evidence prevents oral evidence of that contract being given. Since a lease includes a qabuliat and the qabuliat was for more than one year, the qabuliat cannot be proved except as evidence of part performance of a contract for the purpose of Section 53 A of the Transfer of Property Act, *62 C 291* **Foll.** (*Norman J C*) ALLA DIA v HUSSAIN BAKSH

***1936 J 213.**

REGULATION

See Ajmer Regulations arranged in the Alphabetical Order

RES JUDICATA

See C P C—S 11

REVIEW.

See C P. C—O 47
Cr. P C—S. 369

SALE OF GOODS ACT (III OF 1930).

—S 42—*Burden of proof*

When a defendant takes delivery, he is bound to prove that he had intimated his rejection within reasonable time. What is reasonable time is a question of fact (*Norman J C*) KISHAN LAL v. RAM DAYAL KHAJU LAL.

***1934 J.**

SALT ACT (XII OF 1882).

—— S. 9—*Offence under Salt Act—But not undr Penal Code—Still Section 117 I. P C applies*

(*a*) The punishment under S 117 I. P C for abetment of an act which is an offence under the Salt Act and even though not an offence under the Penal Code is not illegal. S. 9 of the Salt Act does not embrace all abetments but deals only with simple cases of abetment by individuals while S. 117 I. P C applies to serious cases of abetment by public at large (*Jolly J. C*) CHAND KARAN SARDA ADVOCATE in *re* CROWN v. P. SOHAN LAL.

4 J 1.

SCHEDULED DISTRICTS ACT(XIV OF 1874)

——S 5—*List of enactments extended to Ajmer Merwara*

See, Notification by C. C

1 J. 30 (J. S)

——S. 5—*U. P Public Gambling (Amendment) Act (I of 1925) extended to Ajmer-Merwara*

See, Notification by Chief Commissioner

1 J. 16 (J S.)

——S. 5 and S. 5-A—*Bombay Children Act (XIII of 1924) extended to Ajmer Merwara with certain modifications*

See, Notification by C. C.

1 J. 29 (J. S)

SET OFF.

Also see, under "C. P. C.—O 8, R. 6".

— -Equitable—*Court fees not to be paid on equitable set off*

No Court fee is payable on an equitable set off. (*Norman J. C*) SOLEMON D'ROZARIO v. JAMES D ROZARIO (*Jolly J C.*)

6 J. 60

SHEBAITS.

——Suit against shebait—*But defendant not described in title as such—No non-joinder*

A suit against a Shebait of a temple is not bad for non-joinder of the temple merely because the defendant has not been described in the title as Shebait. (*Jolly J. C.*) DADMAT DAS v. MANDIR SRI RAGHU NATHJI.

***3 J. 7.**

SMALL CAUSES COURTS ACT.

See, Provincial Small Causes Courts Act

SPECIFIC RELIEF ACT (I OF 1877).

——S. 42—*Plaintiff's possession for less than 12 years—He entitled to protection against trespasser*

When a person is in lawful possession of a property for a long period of years though he has not a complete legal title to it, he is entitled to protect his possession and enjoyment against infringement by an outsider, *28 C. 831* and *37 M. 298* **Foll.** (*Jolly J. C*) RADHA KISHEN v. DULEY CHAND.

4 J. 32.

SPECIFIC RELIEF ACT (1877), S 54.

—S 54—*Possession confers a title which is good against all persons but the true owner*

Apart from [illegible] possession [illegible] a title which is good against [illegible] but the true owner (*Norman J C*) [illegible] v. [illegible]

1936 J 41

—S 54- *Private nuisance* [illegible]

(*a*) In cases of private nuisance the test always is ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience materially interfering with the ordinary comfort physically of human existence not merely according to the elegant or dainty modes of living but according to plain and sober and simple notions

(*b*) In case of a privy the real question always is whether the defendant has a right for his own purposes to put up such a convenience in that place despite any discomfort it may cause to the plaintiff's occupation of his own premises It is no defence to such an action that the place where the nuisance is created is the only place suitable for the purpose or that all reasonable care and skill has been taken to prevent it by obtaining Municipal Committee's permission and fulfilling all its engineering and health requirements or that the defendant is really making a reasonable use of his own property or that there are numerous other and similar arrangements in the same street (*Murphy J. C*) BHAWANI RAM v DEVI CHAND

1927 S. 29.

SPECIFIC RELIEF ACT (1877)—*Concluded*

—S. 55—*Trespass—Trespasser's inconvenience—Damages not proper remedy.*

A trespasser's inconvenience is no ground for depriving plaintiff of his legal right (*Norman J C*) FATIMA v NATHU.

1936 J. 81

—S 55— *Appropriation of joint property Injunction—Proper remedy*

The ordinary rule is that a mandatory injunction is a proper remedy against the appropriation of joint property by one joint owner to his exclusive use especially when the appropriation is accompanied by an assertion of exclusive title (*Norman J C*) KISHEN CHANDER v JAI NARAIN.

***1934 J. 49**

STAMP ACT (II OF 1899)

—S 2 (II) and S. 17

An instrument which is stamped after execution is not duly stamped, *6 B. L. R. 699* **Dist.** (*Norman J C*) ABHEY RAJ v NAND SINGH

6 J. 21

—S 2 (5) *Bond must contain explicit obligation to pay*

A Khata contained rate of interest, date and signature followed by the words 'Money taken Received Rs. 55'. *Held*, it was not a bond as it did not contain an explicit obligation to pay money, *22 C. 757* **Rel.** *1929 Mad 599, 1927 Nag 195* and *1927 Cal 472* **Dist.** It was also not a receipt. (*Norman J. C*) GHISA LAL v CHOGA

1234 J.

STAMP ACT (1899), S 2.

——S 2 (23)—*Scope*

Receipt is a particular kind of acknowledgment, *1933 All 577* **Dist.** (*Norman J. C.*) GHISA LAL v CHOGA.

1934 J. 20.

——S. 14—*Prohibits writing of second instrument on original stamp* :

(*a*) The section prohibits not merely the *attempt to use* the original stamp for a double purpose but also the *actual writing* of a second instrument on the same piece of paper. (*Jolly J C.*) CHITAR MAL v. SUJANA

5 J. 9

——S. 15—*Acknowledgment duly stamped—But on back of original bond—Not admissible* :

(*b*) An acknowledgment of a debt even though stamped with an anna stamp, if written on the back of the original bond is to be deemed unstamped and is inadmissible in evidence and cannot form the basis of the suit (*Jolly J. C*) CHITAR MAL v. SUJANA

5 J. 9

——S. 15—*Applies to second instrument written upon original stamp paper*

(*a*) The provisions of section 15 of the Stamp Act will apply if a second intrument is written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written. It is immaterial whether the second instrument in fact bears a stamp or not. (*Jolly J. C.*) CHITAR MAL v. SUJANA.

5 J. 9.

STAMP ACT (1899)—*Concluded.*

——S. 17 and S. 2 (II).

See, S. 2 (II) above.

——S. 35—*Receipt admissible on payment of penalty also against Legal Representative of maker* :

A receipt is admissible on payment of penalty not only against the maker but also against his legal representative. (*Norman J. C.*) GHISA LAL v. CHOGA

1934 J. 20.

——S. 35——*Unstamped documents—Admissible on payment of penalty—But not acknowledgment*

(*c*) It is ordinarily open to tender unstamped documents on payment of stamp duty with penalty, but an acknowledgment which is chargeable with a duty of one anna is excluded from this category and cannot be so tendered, *11 Mad. 40* **Dist.** (*Jolly J. C.*) CHITAR MAL v. SUJANA.

5 J. 9.

——S. 36—*Document admitted——But subsequently rejected in violation, Revision lies* :

(*a*) A rejection of a document which has been admitted in evidence for want of a stamp in violation of S 36 of the Stamp Act is a ground for revision, *18 Bom. 737* **Foll** *3 C. W. N. 551* **Diss** (*Baker J.C.*) JUG RAJ v MAYA RAM.

196 S. 26.

——Sch. I, Art. I.—*Scope* :

The words following 'acknowledgment' are limiting and not defining. (*Norman J. C*) GHISA LAL v. CHOGA

1934 J. 20.

SUCCESSION ACT (XXXIX OF 1925)

—S 2 (e)—*Person appointed by will to represent estate in litigation—Is Executor*

An executor is a person charged with the administration of an estate and consequently a person appointed by a will to represent it in litigation comes within this category

A person ceases to be an executor when the period for which he was appointed to act so expires (*Harle J C*) HAR BILAS v. MST. KASTURI.

2 J 43

—S 214—*Scope—Decree holder heir*

A court cannot allow an execution application to proceed without the production of probate (*Norman J C*) QUTBUDDIN v. SUHAG MAL

***1936 J 211**

—S 214 (1) (b)—*Applies when decree holder dies and his legal representatives claim on Succession to execute the decree*

The words "upon an application of a person claiming to be so entitled" in Section 214 (1) b) mean upon an application of a person claiming on succession to be entitled to execute a decree that is to say the clause only applies when the legal representative of a deceased decree holder applies for execution (*Norman J C*) GULAB CHAND v. BASHESHAR LAL

***1936 J 218**

—S. 218 (2)—*Rules for preference*

(c) A sole administrator is preferable to joint administrators a male to a female and one who is accustomed to business to one who is not (*Murphy J C*) MST AMNA BIBI v. HAFIZ MOHAMMED BUX

1927 S 32

—S 218 and S 283—*Paramount title not to be gone into where question is raised*

SUCCESSION ACT (1925), S 302.

not to claim grant but to show that there are no assets

(*b*) When an application for Letters of Administration discloses sufficient right to administer, though if another question were decided adversely to applicant there might technically be no assets of the deceased to be administered, yet it is not for the court to decide these questions and administration should be granted on pleadings *11 I C. 807* **Foll** (*Murphy J C*) MST AMNA BIBI v. HAFIZ MOHAMMED BUX.

1927 S 32

—S 291—*Security—Only for protection against malpractices—Not for value of property*

The value of the entire property for which the grant is made is not necessarily the criterion for the extent of the security. A security for an amount which will afford a reasonable protection against malpractices is quite sufficient *7 C L J 180, 6 C L J 133* and *21 I C 202* **Rel** (*Broomfield J C*) HAFIZ MOHAMMED BUX v. MST AMNA BIBI

3 J 67

—S 302—*Letter of administration not actually issued—Direction for maintenance may be given*

(*a*) Even where no Letters of Administration have been actually issued a Court has power under S 302 of the Indian Succession Act to pass any order it thinks necessary for providing for the immediate necessities of the deceased s family so that they may not be compelled to borrow for their maintenance at exorbitant rates (*Murphy J C*) MST AMNA BIBI v HAFIZ MOHAMMED BUX

SUCCESSION ACT—*(Concluded)*

——S 381 and S. 387—*Debtor cannot question a succession certificate :*

A debtor to the estate of the deceased cannot get a certificate set aside by a declaratory suit or queston the cerficate as a defendant *1925 All 66* and *1931 Lah 70 (1)* **Approved.** *(Norman J C)* RAM CHANDRA v RADHA KISHA

1934 J 70

——S 387—*Debtor is not a proper party—Parties —Meaning of*

Debtor is not a proper party to succession certificate proceedings. The word parties in S 387 means proper parties i e rival claimants to a certificate and not debtors of the deceased's estate *I A ... and ... A ... 123* **Foll.** *(Norman J C)* RAM CHANDRA v RADHA KISHAN

1934 J 70

SUIT

—Appeal—*Is mere continuation of suit*

(*b*) An appeal is a mere continuation of the original proceeding initiated by the filing of the plaint *1929 All 7..6* **Foll** *(Shannon J C)* MODI LAL v MOHAN LAL

4 J 7.

TORT

Conversion
Damages
Encroachment
Libel
Malicious Prosecution
Trespass

Conversion

—Conversion—*Measure of damages is value of goods on date of conversion*

TORT—*(Contd)*

The measure of damages for a wrongful sale is ordinarily the value of the goods on the date of sale, *1927 Lah, 408* **Foll.** *20 B. 633* **Ref** *(Norman J C)* CHAMBA LAL GHISI LAL v ... AJEY RAJ SHIODAN SINGH

1934 J 75

Damages

——Damages—*Negligence—Driver drives a car off the road and into a tree—Onus on the driver to show that it was not due to negligence*

If a driver drives a car off the road and into a tree it lies on him to show that this was not due to negligence *(Norman J C)* FRANCIS v VISHNU LAL

1936 J 71.

——Damages—*Joint owners of Car—One owner sick—He sends the car to fetch a nurse—Driver acts negligently—The nurse is injured—Joint owner not liable*

No liability would flow merely from the defendants being joint owner of a car if a nurse who was called by one owner is injured by an accident to the car *(Norman J C)* FRANCIS v VISHNU LAL

1936 J 71.

——Damages—*Owner of car sick—He requests his relative to fetch a nurse—While taking the nurse the driver drives the car negligently—The nurse is injured—No liability of the relative*

The owner of a car was sick, he requested a relative to fetch a nurse. The relative ... the nurse and took her in the car to the owner. On the way the driver of the car acted negligently. The nurse was injured. *Held*, no liability would fall on the relative merely owing to the

TORT—(*Contd.*)

fact that he travelled in the car at the express request to fetch a nurse (*Norman J. C.*) FRANCIS v. VISHNU LAL

1936 J 71

—**Damages**—*Negligence of servant Allowing an unlicensed and unskilful person to drive is negligent act—Master liable for such negligence*

Had the servant of a motor omnibus allowed an unlicensed and unskilled person to drive it [illegible] passengers the driver carries the duty for which he is employed with the negligence and if a person is injured on account of the negligence the master is liable (*Norman J C*) MOHAMMED NOOR KHAN v. HAMIR MAL.

1936 J. 100

——**Damages**—*Liability of master—Negligence of servant acting against express directions of master—Still master is liable*

In a suit for damages against the master on account of the negligence of his servant it is no defence to plead that the servant acted against the express directions of the master (*Norman J C*) MOHAMMED NOOR KHAN v. HAMIR MAL

1936 J 100.

——**Damages**—*Quantum—For defamatory book*

When plaintiff suffered no special damages on publication of defamatory matter, nominal damages are sufficient (*Norman J C*) MIRZA ABIDUDDIN BEG v. S MAZDAR ALI

1934 J 34

——**Damages**—*Attachment on insufficient grounds—Compensation is awardable*

(*a*) Damages are divided in three classes —

TORT—(*Contd.*)

(*a*) Damages to a man's fame (*b*) Damage done to the person and (*c*) Damage to a man's property When no physical damage has been done no question of mental and physical damage arises But when an attachment is effected on insufficient grounds compensation is awardable and it matters very little by what name the damages are described (*Baker J C.*) FIRM N C KANKARIA & Co. v MOHAMMED HUSSAIN

1925 S. 17

Encroachment

—**Encroachment**—*Quiesence and acquiscence Distinction between— Standing by —To constitute Acquiscence' there must be standing by*

There is a distinction between mere quiscence and acquiescence To constitute acquiscence there must be something equivalent to what is termed in legal parlance as standing by (*Norman J C*) FATMA v NATHU

1936 J 81.

——**Encroachment**—*What amounts to:*

Construction of a staircase is obviously an encroachment since it diminishes the area of the roof available for use (*Norman J C*) KISHEN CHANDER v. JAI NARAIN.

***1936 J. 49**

Libel

——**Libel**—*Damages* :

There are some cases in which proof of special damage is unnecessary and these include the imputation of a criminal offence punishable with imprisonment (*Norman J C*) G CORNELIUS v REV. LAKSHMI CHAND.

***6 J 6.**

——S 43—*Abandonment of claim in suit is not transfer*

Abandonment of claim in a suit is quite different from a gift (Norman J C) KHUDA BUX v UMED MAL

1936 J 124.

——S 52—*Decree a nullity—Doctrine of Lis Pendens has no application*

Doctrine of Lis Pendens has no application when decree is a nullity (Weston J C) DEO KARAN v SUGAN CHAND

1936 J 89

——S 52 **(before amendment by Act XX of 1929)**—*Injunction suit—Plaintiff not to be excluded from benefit of* lis pendens *unless he had neglected to take action on breaches of the injunction—Doctrine independent of notice to third party*

The doctrine of *lis pendens* is independent of notice to the third party and the activity contemplated by S 52 existed not for the purpose of giving notice to the third party but for the purpose of depriving a litigant of benefit who was guilty of laches in prosecuting whatever remedy was open to him In an injunction suit even under the old S 52 the plaintiff should not be excluded from the benefit of lis pendens unless he had neglected to take action on breaches of the injunction (Weston J C) BISHESHWAR LAL v BENI GOPAL.

1935 J. 67

——S 52 **(as amended by Act XX of 1929)**—*Injunction goes with the land*

The law after amendment of S 52 by Act XX of 1929 is that the injunction will go with the land (Weston J C) BISHESHWAR LAL v BENI GOPAL

1935 J 67

——S 53—*Transfer in fraud of creditors—Voidable at option of creditor—But not void*

A transfer in fraud of creditors is voidable at the option of the creditors defrauded It is not altogether void (Norman J C) KISHNI v PARAS RAM

1936 J 118

——S 53—*Small part of Transfer for valuable consideration—Other part agreement to defeat creditors—Transfer wholly void*

When a small part only of the consideration for a transfer in fraud of creditors is good the transfer is wholly void (Norman J C) AMOLAK CHAND v RAM NATH RAM NARAIN

1936 J 104.

——S 53—*Transferor and transferee equally guilty of fraud—Suit by fraudulent transferee—Transferor can plead fraudulent nature of transfer—Transferor will succeed*

When two parties are found equally guilty of committing fraud then defendant must succeed if the intended fraud has been carried out 71 I C I and 55 C 51 Foll (Barlee J. C) MADAT ALI v NATHAN ALI

2 J 36

TRANSFER OF PROPERTY ACT (1882) S 53

——S 53—— *No absolute distinction between a sale under C P C , O 21 R 63 and one under Transfer of Property Act S. 53*

There is no absolute distinction between a suit brought under O 21 R 63 of C P C and a suit under S 53 of the Transfer of Property Act. If a decree holder whose attachment has been removed as the result of an objection preferred under O 21, R 58 files a suit against the objector on the allegation that the objector's title is based on a transfer which is voidable under S 53 the suit falls under both O 21, R 63 and S 53. (*Norman J C*) AMOLAK CHAND v. RAM NATH RAM NARAIN

1936 J 104.

——S. 53 – *Suit under O 21 R 63 of C P C by transferee from judgment debtor Decree holder can plead in defence that transfer is fraudulent without suing separately*

Objection under O 21 R 58 of the Code of Civil Procedure based on a registered sale deed executed in objector's favour by the judgment debtor Objections disallowed Suit by objector Decree holder raised defence that sale was in fraud of creditors. *Held*, it is open to the decree holder to contend in defence that the transfer was in fraud of creditors He need not file a separate suit on behalf of all the creditors for this purpose. *15 M 760* **Foll** (*Norman J C*) MOHAN LAL v GIRWAR LAL

*1936 J 212

——S. 53-A— *Section has no retrospective effect*

TRANSFER OF PROPERTY ACT(1882 S 54.

S 53 A has no retrospective effect *5 A M L J 5 (III)* **Foll** 49 A 25 **Not applicable** (*Norman J C*) SUA LAL v MUNICIPAL COMMITTEE, BEAWAR.

1936 J 145.

S 53-A *Not retrospective*

Retrospective effect ought not to be given to a statute unless an intention to that effect is expressed in plain and unambiguous language Section 53 A of the Transfer of Property Act is not therefore retrospective (*Norman J C*) FIRM JETHMAL KUNDANMAL v. S LADKI LAL

*5 J 5 (III)

——S 53 A— *Equitable title can be foundation for an injunction suit*

A suit for injunction is a suit in defence for an existing possession An equitable title obtained under S 53-A of the Transfer of Property Act is a foundation for an injunction suit *6 R 125* **Ref** (*Norman J C*) SUA LAL v. MUNICIPAL COMMITTEE BEAWAR

1936 J, 145.

——S 54 *Scope*

Transfer of complete ownership for a price is a sale Price may be less than the market value of the property and it may have been termed as Nazrana (*Broomfield J. C*) MADHO LAL v M BINODI LAL

3 J 44

——S 54 *Sale by delivery of possession — Actual delivery of possession necessary — Execution of rent note not sufficient*

Vendor in possession and continues in possession by executing a rent note in favour of the Vendee There is no delivery of possession and consequently no sale.

TRANSFER OF PROP. ACT (1882), S. 55.

When actual delivery is not possible a registered instrument is the only method of effecting a sale, *59 A. 986* and *31 C. 207* **Foll** *35 M. 1158* and *60 C. 356* **Not Foll** (*Norman J. C.*) RAMZANI BUX v. BHULI. **1936 J 186.**

——S. 55 (1) (a)—*Seller bound to disclose material defect*

The seller is bound to disclose to the buyer any material defect in his title, and failure to do so is, under the concluding words of the Section, fraud. The minor's title to a share in the property is a material defect in the title of the seller. If there is reasonable possiblity of litigation in connection with property the buyer is certainly entitled to be put in possession of full information on the point at the time of contracting. (*Norman J.C.*) KISHEN LAL v. MOTI LAL ***1934 J. 27.**

——S. 57—*Scope*

The Section applies only when payment is made either before the sale is complete or as part of the sale transaction. (*Norman J. C.*) SUA LAL v. UMED MAL **1936 J 58.**

——S. 59—*Mortgage created by instrument—Defendant cannot argue that it was created by delivery of possession*

Mortgage having been created by instrument it is not open to defendant to argue that it was really created by delivery of possession. (*Norman J. C.*) DAULA NATH v. GANESH MAL. **1936 J 54**

——S. 59 (before amendment by Act XX of 1929)—*Transfer of possession with intention to create mortgage not effectual*

TRANSFER OF PROP. ACT (1882), S 60.

A mortgage for a sum exceeding Rs 100 can only be effected by a registered instrument. The mere transfer of possession together with intention of parties to make a mortgage is not effectual on the ground of the equitable doctrine of part performance, *58 C. 1235* **Rel.** *20 I. C. 400, 10 P. 117* and *1932 All 259* **Dist** (*Norman J. C.*) GHISU LAL v. GORAN. **1934 J. 57**

——S 59 A—*Mortgage deed—Legal representatives bound*

Convenants in a mortgage deed are by operation of law binding on legal representatives of the parties and it is neither necessary nor usual to refer to the legal representative specifically. (*Norman J. C*) LADU RAM v. NATHI, MST. ***1936 J 209**

——S. 60—*Suit for redemption—Plaintiff must prove existence of mortgage—Quantum of Evidence.*

Where a plaintiff sues to redeem a mortgage the existence of the mortgage must be proved. If plaintiff can show that he originally had title to the land, then that fact will corroborate such evidence, as he produces, of the existence of the mortgage, but it cannot entirely take its place. If there is no evidence of the mortgage then the mere fact that plaintiff once had a title is not sufficient to prove that defendant's possession must be that of the mortgagee. (*Norman J. C.*) MANGI LAL v. CHUNNI LAL. **1936 J 121.**

——S. 60 and S. 3—*Mortgagee sub-mortgages by registered instrument—Registration no notice to mortgagor—Payment to mortgagee extinguishes mortgage*

TRANSFER OF PROP ACT (1882), S 61

[illegible] of a [illegible] is no [illegible] Mortgage [illegible] consequently payment of the mortgage amount by the mortgagee extinguishes the mortgage and [illegible] personally against [illegible] property (*Jolly J C*) S PANNA LAL v. S TIKAM CHAND

***3 J 3**

——S 61—(as amended by Act XX of 1929)—*[illegible] retrospective effect*

[illegible] of the Transfer of Property Act [illegible] by Act XX [illegible] retrospective effect (*Norman J C*) LALU RAM v. MAGAN LAL

***1936 J 217**

——S 61—(before amendment by Act XX of 1929)—*Consolidation of mortgages—Several mortgages between same parties on same property—Suit for redemption—Mortgagor must redeem all such mortgages*

[illegible] must redeem all mortgages between the same parties [illegible] on the same property. The Rule applies to all mortgages whether previous or subsequent to the mortgage in question *50 M 180* and *17 B 6?2* **Foll** (*Norman J C*) BALU RAM v. MAGAN LAL

***1936 J 217**

——S. 91—*Intermeddler cannot redeem*

(*b*) An intermeddler is a person who interferes wrongfully with property. Consequently there is a legal liability on him but he has no legal right. Such a person cannot be allowed in law or equity to represent the real owner and redeem a mortgage (*Shannon J C*) S UMED MAL v. BHAGWATI.

***5 J 6 (1).**

TRANSFER OF PROP ACT (1882), S 107.

——S 92—*Execution of mortgage decree—Private sale in course of—Is invalid but purchaser steps into shoes of mortgagee if mortgage decree paid off by him*

(*b*) A private sale in the course of execution of a mortgage decree is invalid but if the mortgage decree has been paid off by the purchaser he steps into the shoes of the mortgagee under S. 92 of the Transfer of Property Act and can recover the mortgage amount from the properties sold to him, *193 P C 109* **Relied upon** (*Macllin J C*) NARSINGH DAS v. NARAIN DAS

5 J 73

——S 106—*Agricultural leases—Six months' notice usual*

Although S. 106 does not strictly apply to agricultural leases yet in the absence of proof of any settled custom to the contrary six months' notice is usually held to be necessary for their determination (*Norman J C*) MIR SARFARAZ ALI v. S MUZAFFAR HUSSAIN

1934 J 37

——S 106—*Notice*

Rent note for a definite period. No notice necessary by tenant that he had discontinued possession (*Norman J C*) SIRAJUDDIN v. CHITAR MAL.

1934 J 40

——S 107

Also see Registration Act SS 17 (*a*) & 49

——S. 107—*Rent Note for six months Does not require registration—If admissible in evidence*

TRANSFER OF PROP. ACT (1882) S 107

The rent note was for 6 months only and so did not require restration under Section 17 of the Registration Act and not being a lease did not require registration under the Transfer of Property Act (*Norman J C*) MD IBRAHIM v. ABDUL KARIM MIRZA

***1936 J 209**

——S 107—*Qabuliat coupled with transfer of possession—Can form basis of suit*

A Qabuliat signed by the tenant amounts to an agreement to lease and coupled with transfer of possession gives a cause of action for a rent suit (*Norman J C*) BENI GOPAL v. ABDUL RAHMAN

6 J 43

——S 107—*Lease not signed by both parties is invalid*

(1) A lease not signed by both the parties is invalid (*Norman J C*) G. GOULD v. JATAN LAL

5 J 100

——S 116—*Assent—Presumption—Finding of fact*

To constitute a tenant holding over there must be assent on the part of the lessor

Whether there was such assent or not is a question of fact

Assent cannot be presumed from a continuance of possession 193[illegible] Pat [illegible] **Ref** (*Norman J C*) MST GANESHI v. KAMAL

***1934 J 27**

——S 116—*Surety when holding over*

TRANSFER OF PROP. ACT (1882), S 123

A tenant holds over when he remains in possession and the lessor accepts rent from him or otherwise assents to his possession It is essential for the plaintiff to show that defendant had remained in possession after the expiry of the period covered by the rent note (*Norman J C*) SIRAJUDDIN v CHITAL MAL

1934 J 40

——S 116—*Rent for more than three years cannot be decreed*

If a tenant holds over after the expiry of the period contained in a registered deed then he does so under an *implied contract* arising under S 116 of T P Act and consequently no decree can be passed against him for the recovery of rent for more than three years (*Barlee J C*) MADAT ALI v. NATHAN ALI

2 J 36

——S 122—*Gift is irrevocable—Transferee from the donee is protected*

A gift once made by legal means is irrevocable and the donor cannot be heard to say as against the donee that it was never intended to take effect The donee acquires as against the donor a good title from the date of the gift Even when a transferee is an ostensible owner only the rights of third parties acting in good faith are protected by S 41 of the Transfer of Property Act much more are they protected when the transferee has acquired not merely an ostensible but a real title (*Norman J C*) KISHEN v. PARAS RAM

1936 J 118

——S 123—*Gift of immoveable property by Hindu by way of Sankalp is not valid—Registration Compulsory*

T. P. ACT (1882)—*Concluded.*

A ... [illegible] ... instrument. ... [illegible] ... oral ... [illegible] ... 1928 *All.* 633 Foll ... *J C*) MST. GOLAN v. MOTI CHAND.

***1936 J 213**

TRESPASS

See Tort—Trespass.

USURIOUS LOANS ACT (X OF 1918)

—S. 1 (2)—*Act applies to Ajmer-Merwara*

(*a*) The Usurious Loans Act applies to Ajmer Merwara (*Murphy J C*) BEHARI LAL v. BHIKON.

3 J 5

—S 3—*Applicable in ex parte suit*

The court may apply the Act in an ex parte suit. A rate of ... per annum is in itself a sufficient ground for granting relief under the Act (*Norman J C*) ANTHONY v. NATH MAL.

***1934 J. 48**

—S. 3—*If interest penal—Reasonable rate be allowed—If interest is excessive and unfair—Court may reduce it*

(*b*) If interest is penal the court may award it at such rate as is reasonable and when it is not penal the court may reduce it if it is excessive and the transaction was substantially unfair under S. 74 of the Contract Act and S. 3 of the Usurious Loans Act. (*Murphy J C*) BEHARI LAL v. AHMED.

1927 S. 19

USURIOUS LOAN ACT—*(Concluded)*

—S 3—*Pledge as security for the loan—Interest at 40 per annum—Rate excessive and unfair*

(*b*) Where there is a pledge as security for the loan the rate of 40 per cent is certainly excessive and unfair.

(*c*) Though the court should allow the interest at the *stipulated rate* however high, yet it can reduce it in cases in which S. 74 of the Contract Act or S. 3 of the Usurious Loans Act applies. (*Murphy J C*) BEHARI LAL v. BHIKON.

3 J 5

USARY LAW REPEAL ACT (XXVIII OF 1855)

—S 2—*Stipulated rate—Must be allowed however high unless penal or excessive and unfair*

(*a*) When there is a stipulated rate of interest the court must allow it however high it may be. (*Murphy J C.*) BEHARI LAL v. AHMED.

1927 S. 19

VAKALATNAMA.

—Construction—*A pleader appointed for the prosecution (pervi) of all proceedings connected with a case can file the execution application for which he engaged:*

VAKALATNAMA—(*Concluded*)

A pleader was appointed for the prosecution (pervi) of all proceedings connected with an execution case *Held* he could file the execution application and that in construing a Vakalatnama the circumstances in which it was given must be looked to (*Norman J C*) KHAILAT MOHAMMAD v HIRA CHAND

1936 J 138

WORDS AND PHRASES

—**'Baqi Dena Reha'**—*Amounts to mere acknowledgment and not promise to pay*

The word '*Dena*' does not convert an acknowledgment into an express promise to pay 21 M 49 **Ref** (*Norman J C*) MST IMALTI v CHAMILA LAL

1936 J 180

—**"Hindu Joint Family Firm"** *Expression not correct*

WORDS AND PHRASES—(*Concluded*)

The expression Hindu Joint family firm is inaccurate (*Norman J C*) FIRM HAZARI MAL GULAB CHAND v FIRM DOLAT RAM KUNDAN MAL

1936 J 130

—**"Possession follows title"**—*Application when property incapable of continuous possession*

Vendor will only be deemed to be out of possession when some one is holding adversely to him (*Norman J C*) FATEH LAL v RAM NARAIN

1936 J 191

WORKMEN'S COMPENSATION ACT (VIII OF 1923)

—**S. 2 (1) (d)**—*Adoptive mother is 'dependant'*

An adoptive mother is a 'dependant', *1931 Rang 173* and *1931 Lah 399* **Ref** (*Norman J C*) B B & C I Ry v MST BAII MOOLI

***1934 J 101**